**OMB Approval: 0930-0169**
**Expiration Date: 3-31-2011**

# PROTECTION & ADVOCACY for INDIVIDUALS with MENTAL ILLNESS (PAIMI) PROGRAM - ANNUAL PROGRAM PERFORMANCE REPORT (PPR)

| STATE Indiana | FISCAL YEAR 2010 |
|---|---|

**The Annual PAIMI Program Performance Report (PPR), which is due by January 1st of each year** [PAIMI Rules at 42 CFR 51.8 and the PAIMI Act at 42 U.S.C. 10805(a)(7)], **contains information provided by the State P&A system on its management and operation of the PAIMI Program. The Advisory Council Report (ACR) section of the annual PPR is the PAIMI Advisory Council's (PAC) *independent assessment* of the operations of the P&A system which is signed by the PAC Chair.**

**The Annual PPR may be transmitted by mail or electronically. However, if submitted electronically, the P&A shall mail to the SAMHSA, Division of Grants Management at least one (1) copy of the Advisory Council Report (ACR) with the original signature of the *PAIMI ADVISORY COUNCIL (PAC) CHAIR on the cover page.* Send the reports to the following addresses:**

| ***ELECTRONIC MAIL:*** | ***REGULAR MAIL*** |
|---|---|
| **Barbara.Orlando@SAMHSA.hhs.gov** | **Barbara Orlando, Room 7-1091**<br>**SAMHSA - Division of Grants Management**<br>**1 Choke Cherry Road**<br>**Rockville, Maryland 20857** |

***FOR CERTIFIED MAIL & OVERNIGHT DELIVERY -*** **Send to the above mailing address**
***BUT CHANGE THE ZIP CODE TO: 20850; Phone No. (240) 276-1400***

**Electronic submissions of the annual PAIMI PPR, including the ACR, should also be sent to the PAIMI Program Coordinator, Karen.Armstrong@samhsa.hhs.gov,. If submitted electronically, please ensure that the Division of Grants Management is sent a signed copy of the ACR. Please use the attached glossary and instructions to complete the form. Questions may be directed to Ms. Armstrong, the PAIMI Program Coordinator at (240) 276 1760.**

**Public reporting burden for this section of the annual PAIMI PPR is estimated to average 28 hours per response. This includes the time needed to review the instructions, to search existing data sources, to gather the data needed, and to complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to SAMHSA Reports Clearance Officer; Paperwork Reduction Project (0930-0169); OAS, Room 7-1044; 1 Choke Cherry Rd.; Rockville, MD 20857. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930-0169).**

# ANNUAL PAIMI PROGRAM PERFORMANCE REPORT (PPR)

## TABLE of CONTENTS


| SECTION | | PAGE |
|---|---|---|
| 1 | GENERAL PAIMI PROGRAM INFORMATION | 3 |
| 2 | PAIMI PROGRAM PRIORITIES (GOALS) & OBJECTIVES | 7 |
| 3 | INDIVIDUAL PAIMI-ELIGIBLE CLIENTS | 18 |
| 4 | CASE COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS | 22 |
| 5 | INTERVENTIONS ON BEHALF OF GROUPS of PAIMI-ELIGIBLE INDIVIDUALS | 33 |
| 6 | NON-CLIENT DIRECTED ADVOCACY ACTIVITIES | 40 |
| 7 | GRIEVANCE PROCEDURES | 42 |
| 8 | OTHER SERVICES & ACTIVITIES | 45 |
| 9 | ACTUAL PAIMI BUDGET/EXPENDITURES | 51 |
| GLOSSARY | | 55 |

| SECTION 1. GENERAL PAIMI PROGRAM INFORMATION | |
|---|---|
| **1.A. Fiscal Year:** | **2010** |
| **State:** | **Indiana** |
| **Name of P&A system:** | **Indiana Protection and Advocacy Services** |
| **Mailing Address & Phone Number of Main Office:** | **4701 N. Keystone, Suite 222<br>Indianapolis, Indiana 46205<br>317-722-5555 Voice<br>317-722-5564 Fax** |
| **Mailing Address & Phone Numbers of for each Satellite Office:** | **None** |
| **Name of PAIMI Program, if different from the State P&A agency:** | |
| **Name, phone number, and e-mail address of the PAIMI Coordinator:** | **David Boes<br>(317) 722-5555 ext 229<br>dboes@ipas.in.gov** |
| **PPR Prepared by:<br>Name:<br>Title:<br>Area Code & Phone Number:<br>E-mail Address:** | **David Boes<br>Program Manager/PAIMI Coordinator<br>(317) 722-5555 ext 229<br>dboes@ipas.in.gov** |
| **The name of the Director of the State mental health agency to whom copies of the PAIMI PPR & ACR were sent.*** | **Gina Eckart,<br>Director of Division<br>of Mental Health And Addiction** |
| **Date the PAIMI PPR &ACR were sent to the State mental health agency.*** | **December 29, 2010** |
| ***PAIMI Act [42 USC at 10805 (a)(7) mandates that the Head of the State mental health agency receive a copy of this report on or before January 1.*** | |

| SECTION 1. GENERAL PAIMI PROGRAM INFORMATION | | |
|---|---|---|
| **1. B. GOVERNING BOARD** | | |
| **1.B.1. Does the P&A have a multi-member governing board? If Yes, complete governing board (GB), Table 1.B.3. [See Governing Authority - 42 CFR 51.22(b).].** | **Yes X** | **No** |
| **1. B.2. Is the Chair of the PAIMI Advisory Council (PAC) a member of the GB? An explanation is required if the answer to this question is *NO&THE P&A IS PRIVATE non-profit P&A system*.** | **Yes X** | **No** |

| 1. B. 3. GOVERNING BOARD (GB) INFORMATION | |
|---|---|
| **In the following table, please provide the requested information for the GB members *as of 9/30.*** | |
| **a. Total number of GB member seats available.** | **13** |
| **b. Total number of GB members serving as of 9/30.** | **11** |
| **c. Total number of GB vacancies on 9/30.** | **2** |
| **d. Term of appointment for GB members (number of years).** | **3** |
| **e. Maximum number of terms a GB member may serve.** | **5** |
| **f. Frequency of GB meetings.** | **Quarterly** |
| **g. Number of GB meetings held this fiscal year .(FY)** | **4** |
| **h. % (Average) of GB members present at meetings this FY.** | **65%** |

## SECTION 1. GENERAL PAIMI PROGRAM INFORMATION

### 1. B. 4 GOVERNING BOARD COMPOSITION

| | |
|---|---|
| **"The governing board shall be composed of members who broadly represent or are knowledgeable about the needs of clients served by the P&A system . . ." [42 CFR 51.22(b)(2). *Count each GB member only once*.** | |
| **a. Number of individuals with mental illness (IMI) who are recipients/former recipients (R/FR) of mental health services or are or have been eligible for services.** | **1** |
| **b. Number of family members of individuals with mental illness who are R/FR of mental health services.** | **2** |
| **c. Number of guardians.** | **3** |
| **d. Number of advocates or authorized representatives.** | |
| **e. Number of other persons who broadly represent or are knowledgeable about the needs of the clients served by the P&A system.** | **5** |
| **TOTAL** | **11** |
| **Section 42 CFR 51.22(b)(2) - mandated GB positions for private, non- profit systems*. Count each GB member only once. The Total of 1.B.3.a. must equal the subtotals of 1.B.3.b and 1.B.3.c.*** | |

### 1. C. PAIMI PROGRAM STAFF

**1. Provide the total number of P&A staff who are paid either partially or totally with PAIMI Program funds, including PAIMI Program income. Total: 29**

| | |
|---|---|
| **a. How many of the staff listed above are attorneys? Total: 4** | **b. How many of the staff listed above are non-attorney case workers/mental health advocates? *Do not include support or administrative staff in this count.* Total: 12** |

| SECTION 1. GENERAL PAIMI PROGRAM INFORMATION | | |
|---|---|---|
| **1. D. ETHNICITY/RACE** | | |
| | **GOVERNING BOARD** | **PAIMI STAFF** |
| **American Indian/ Alaska Native** | | |
| **Asian** | | |
| **Black/African American** | **1** | **3** |
| **Hispanic or Latino** | | |
| **Native Hawaiian/Other Pacific Islander** | | |
| **White** | **10** | **22** |
| **Vacancies on 9/30 (Identify by position).** | **2- Gubernatorial** | **1 Attorney 3 Advocates** |
| | | |
| | | |
| | | |
| **TOTAL** | **13** | **29** |

| **1. E. GENDER** | | |
|---|---|---|
| | **GOVERNING BOARD** | **PAIMI STAFF** |
| **Male** | **4** | **9** |
| **Female** | **7** | **16** |
| **TOTAL** | **11** | **25** |

## SECTION 2. PAIMI PROGRAM PRORITIES (GOALS) and OBJECTIVES

**In the format provided, please list the program priorities (goals) and activities, as reported in the PAIMI Application (under Priorities and Objectives) for the SAME Fiscal Year (FY) that were used to achieve the annual objectives for this PPR.**

**The priorities shall be limited and consistent with the current mission and Government Performance Results Act (GPRA) mandates, accountability, and performance-based management requirements of SAMHSA/CMHS.**

**Refer to the Guidance information included in the annual PAIMI Program Application.**

**For each priority (goal) identified for the FY, select *ONE (1) CASE EXAMPLE THAT BEST ILLUSTRATED THE ACTIVITIES RELATED TO EACH PRIORITY (GOAL).* Please provide in narrative form, one (1) example of an individual or systemic case and, if applicable, a legislative or regulatory activity. Remember case examples must illustrate the impact(s) and/or outcome(s) of PAIMI Program efforts.**

**Write the case example as though you were telling a story. As appropriate, Include the following information in your narrative: the presenting issue/complaint to be resolved; who (the parties involved); what the facts about the situation); where (the event occurred, such as, the type of facility, etc.); why the P&A program was involved; how the P&A program made a difference; and the outcome(s) (what resulted from this P&A activity)? For example, "as a result of P&A intervention, this client lives independently in the community, goes to work every day . . . ."**

**Each narrative shall reflect the activities used to achieve the annual objectives; be brief, concise; use people first language; maintain confidentiality of the individual client; and, be consistent with the priorities and objectives submitted in the PAIMI Program application for same FY. Check narratives for redundancies, typographical, grammatical and syntax errors. *IN YOUR NARRATIVES, PLEASE SPELL OUT THE FULL NAME OF AN ENTITY, ETC. BEFORE USING ITS ACRONYM.***

***TO FACILITATE REVIEW OF THIS REPORT, THE PRIORITIES & OBJECTIVES MUST BE PRESENTED IN THE SAME ORDER AS THOSE REPORTED IN THE PAIMI APPLICATION FOR THE SAME FY.***

**See the GLOSSARY for definitions of priorities (goals) and objectives.**

## SECTION 2. PAIMI PROGRAM PRIORITIES & OBJECTIVES

**SECTIONS 2.A., 2.B. & 2.C. were previously reported in the priority (goal)/objective table of the PAIMI Application for the same FY.**

**2. A. PRIORITY (GOAL) - is a broad, general description of what the PAIMI Program hopes to accomplish. Each priority (goal) may have either a single or multiple objectives.**

**2. B. OBJECTIVE - is the activity or activities undertaken to achieve a particular annual program priority (goal). Objectives have quantifiable targets and measurable outcomes. *All objectives listed are to be completed within the FY*. Regulatory, legislative and/or litigation activities may span several FYs. Therefore any objectives for these types of activities are to be divided into multiple steps that are achievable within the FY.**

**2. C. TARGET POPULATION - Identification of a specific PAIMI-eligible population to be served (targeted) under each objective, such as, the elderly, adolescents, etc.**

***Items 2.D. & 2.E. are to be reported in this section of the PPR. [Refer to the PAIMI Application for the same FY in which the information in items 2.A. 2.B & 2.C. was provided].***

**2. D. TARGET - A numerical statement of what is desired or expected as a result of the objective. [Note: *Even narrative targets may be expressed in measurable terms/numbers, For example, "Development of one [1] protocol for facility monitoring."]***

**2. E. OUTCOME - What was actually achieved as a result of the activity expressed in numerical terms? (See note in 2.D.).**

**2. F. OBJECTIVE MET OR NOT MET: *A statement of whether the expected outcome (target) for this objective was met. If not met, an explanation is required as well as a description of future activities to address the unmet objective, if appropriate.***

***Insert additional pages into this section as needed.***

**Priority: 1** Reduce or eliminate the abuse and neglect of individuals with mental illness in community-based or long-term care facilities.

**Objective 1.1**: Review allegations of abuse or neglect of individuals residing in Indiana Department of Mental Health and Addictions [Facility].

**Target Population**: Persons with a significant mental illness residing in a facility operated by the Indiana Division of Mental Health and Addiction.

**Target**: 15 Reviews

**Outcomes**: IPAS accepted 15 allegations of abuse and neglect on which IPAS initiated reviews and monitoring activities concerning the allegations. The intent and goal of cases opened under this objective for IPAS staff will be to advocate for the client's right. IPAS's initial goal, as an Advocate is to promote that alleged victim's rights to a timely and thorough investigation by those entities primarily charged with the responsibility. Secondarily, the assigned Advocate will determine if an abuse/neglect investigation was initiated, conducted and completed per the entity's identified policy and procedure of the state operated facility.

The accepted cases originated from each one of Indiana's state run facilities. By end of the fiscal year, IPAS had closed out eight of the reviews and monitoring activities concerning allegations of lack of treatment, lack of discharge planning, verbal abuse and client safety issues.

**Objective 1.1 was Met** as services was provided to 15 individuals in institutional settings, who had alleged an incident of either abuse or neglect.

**Representative Sample Case Narrative for Objective 1.1**

"Kathy's" employer contacted IPAS expressing concerns that her employee whom had been civilly committed and subsequently admitted to Madison State Hospital (MSH), a state psychiatric facility operated by Indiana's Division of Mental Health and Addiction (DMHA). The employer had stayed in contact with Kathy, from her initial hospitalization at a local acute care facility to Kathy's admission at MSH. It was through this ongoing contact that the employer had become concerned and contacted IPAS regarding Kathy's allegations of not receiving any type of treatment to address the issues that prompted the hospitalization.

Although the assigned Advocate did apprise the client of her rights to grieve, she chose not to file an internal complaint with MSH or an external complaint with DMHA. Therefore, there were no investigation or complaint processes for IPAS to monitor. Thus, IPAS conducted its own review of the client's records concerning her allegation of denial to access to appropriate programming and treatment.

IPAS' review found that while the focus of the treatment plan was not the client's eating disorder, the client had been afforded multiple opportunities to raise the issue of this and request modification be made to the treatment plan. Furthermore, IPAS found that the hospital was monitoring her weight through her stay. At discharge, Kathy had actually gained weight. Additionally while Kathy had expressed a concern about not receiving any treatment for a full month, the timing of her arrival occurred at the conclusion of the planned 12-week group campus-wide treatment courses. Several of the treatment groups are structured as electives courses affording those patients some latitude to choose issues of particular interest among those which are directed by the individual's treatment team. While IPAS expressed concerns regarding how the hospital's schedule caused a delay in Kathy's participation, the hospital did offer and provided group treatment during the interim period.

IPAS subsequently monitored the treatment program to assure treatment was offered in a consistent manner ensuring Kathy's inclusion. At time of closure, Kathy has returned to a community setting with follow-up services to be provided through a local community mental health center.

**Objective: 1.2** Review allegations of abuse or neglect of individuals residing in Comprehensive Mental Health Centers.

**Target Population**: Persons with a significant mental illness residing in a facility or setting operated by a Comprehensive Mental Health Center.

**Target:** 14 Reviews

**Outcome:** IPAS accepted 14 allegations of abuse and neglect on which IPAS initiated reviews and monitoring activities concerning the allegations. The intent and goal of cases opened under this objective for IPAS staff will be to advocate for the client's right. IPAS's initial goal, as an Advocate is to promote that alleged victim's rights to a timely and comprehensive investigation by those entities primarily charged with such a responsibility. Secondarily, the assigned Advocate will determine if an abuse/neglect investigation was initiated, conducted and completed per the entity's identified policy and procedure of the community mental health center.

The accepted cases originated from only five of the state's community mental health centers, although the settings varied from in-patient to supervised group living homes. By years' end, IPAS had closed ten of the reviews and monitoring activities concerning allegations of lack of treatment, staff physical abuse and client safety issues.

**Objective 1.2 was Met** as services were provided to 14 individuals in a residential setting of a community mental health center, who had alleged an incident of either abuse or neglect.

**Representative Sample Case Narrative for Objective 1.2**

A PAIMI eligible resident, "Debbie", of a group home operated by a community mental health center (CMHC) contacted IPAS with allegations that specific staff members were financially exploiting them.

Following Debbie's contact with IPAS, a meeting between Debbie and the CMHC was held to address her concerns. During this meeting , the CMHC agreed to correct indentified errors in her accounting statement. Subsequently, the CMHC proposed to incorporate changes in their monthly accounting forms, which would make it easier for residents to understand their individual accounts, expenses and balances. The change would affect all of the individuals served in the resident settings operated by the CMHC.

No intentional act of mismanagement of Debbie's funds by a specific staff was identified, the mistakes appeared to be the result of accounting errors. The IPAS Advocate monitored the CMHC's implementation of the new policy and restitution into Debbie's account. In order to protect the client's identity, the name of the specific CMHC was purposely withheld.

**Objective: 1.3** Review internal investigations concerning the death of an individual that occurred within a mental health treatment facility.

**Target Population**: Individuals with a significant mental illness residing in mental health treatment facilities other than a local, state or federal correctional facility.

**Target:** 10 Reviews

**Outcome:** While nine cases continue to remain open, IPAS did close two cases, as there was no indication of abuse or neglect having contributed to the client's death in either case, nor was there any indication that the facility failed to perform their internal review, as per their policies.

For the majority of the year, IPAS' denial of access to records was subject to the continuing litigation before the Seventh Circuit Court of Appeals in IPAS v. FSSA. This lack of access to records has hindered IPAS-PAIMI's ability to fully review and resolve those cases that were opened for monitoring. On April 22, the court held that the PAIMI Act provides a right of action to a protection and advocacy agency to bring a lawsuit in federal court to enforce the access provisions of the PAIMI Act. The court also held that the 11th Amendment is not a bar to the lawsuit. The IPAS lawsuit, the court held, was a straightforward application of Ex parte Young because IPAS sued state officials, alleged an ongoing violation of federal law, and sought prospective relief only. Finally, the court summarily held that the Seventh Circuit was now joining the four other circuits that have held that peer review records are required to be disclosed to a protection and advocacy agency under the PAIMI Act.

After losing in the Seventh Circuit, the state requested a stay from the Seventh Circuit. When the stay was denied there, the state moved for a stay from the United States Supreme Court. Justice Stevens denied the stay. Shortly thereafter, IPAS began seeking the peer review reports concerning the affected cases. Thus, the year ended with IPAS at the initial review process of the records received to clear the backlog of cases affected by the court case. The State of Indiana has subsequently filed a petition for certiorari in IPAS v. FSSA.

**Objective 1.3 was Met**, as IPAS was involved in reviews concerning 11 individuals that died while in the care of a residential mental health treatment facility.

**Objective: 1.4** Review allegations of inappropriate use of seclusion/restraints.

**Target Population:** Adults and children with a significant mental illness residing in a treatment facility.

**Target** 14 Reviews

**Outcome:** IPAS accepted and opened for review 14 allegations concerning inappropriate use of seclusion/restraints. The accepted allegations represented cases originating in all five of the state facilities, two community mental health centers and an acute care hospital, all settings were considered in-patient. By the close of the fiscal year, IPAS had closed seven of the cases.

**Objective 1.4 was Met** as services were provided to 14 individuals in a residential setting of a mental treatment setting who alleged inappropriate use of seclusion/restraints.

**Representative Sample Case Narrative for Objective 1.4**

"David" contacted IPAS during the summer of 2009, alleging that his shoulder was injured during a takedown by Logansport State Hospital (LSH) staff. After a prolonged and tedious fight to access David's records, IPAS was finally able to review charted information pertaining to David's behavioral incident and injury.

Once IPAS obtained the records, a subsequent review, did confirm that David's shoulder was injured during a takedown. According to written documentation and verbal recount by David's guardian, David had not responded to either of staff's attempts of verbal redirection or "gentle touch" escort. Staff's physical takedown of David reportedly followed an escalation of his behavior. David's shoulder was injured as his shoulder hit a chair during the physical intervention. Records indicated that staff sought medical attention almost immediately afterwards. The injury required surgery.

IPAS found that LSH had no definitive policy regarding staff review and/or response to incidents that result in significant patient injury. Therefore, there was no internal standard or policy on which would cause an internal review to occur. IPAS raised concerns as to the lack of information and review of the incident by the hospital. Subsequently, the State Board of Health identified the same concerns regarding the lack of accountability and standards applicable to the internal investigation.

A definitive policy addressing incidents resulting in significant client injury has since been developed, approved by DMHA and implemented hospital-wide. As a result, it appears that all appropriate changes in procedure have been identified and implemented.

**Objective: 1.5** Review allegations of abuse and neglect within Indiana Department of Correction facilities.

**Target Population:** Persons with a significant mental illness residing in a facility operated by the Indiana Department of Correction facility.

**Target:** 33 Reviews

**Outcome**: During the spring of 2010, Judge Young of the District Court certified the class of prisoners for the litigation as those with serious mental illness who are housed in isolated settings within the Indiana Department of Correction (IDOC). A notice to the class was posted conspicuously or delivered to the entire population of prisoners in the IDOC, resulting in the identification of 33 prisoners for the class.

Discovery has continued to the point where IPAS and its counsel have begun to receive direct computer access to the medical and mental health records of prisoners identified as class members. Their records can then be reviewed by the expert witnesses and factored into the facility visits the experts will conduct later this year. Finally, the case has been reassigned to Magistrate Debra McVicker Lynch, and newly-appointed District Court Judge Tanya Walton Pratt.

During the summer of 2010, Judge Pratt of the district court dismissed the defendant's pending "Motion to Reconsider." The motion had been filed to challenge Judge Hamilton's July 2009 ruling against the defendant's "Motion to Dismiss." Judge Pratt allowed defendants the opportunity to refile their motion in the future.

**Objective 1.5 was Met** as services was initiated for 33 individuals in the custody of Indiana Department of Correction, who had alleged an incident of either abuse or neglect.

**Objective:** 1.6 Review allegations of abuse and neglect in jails (non Indiana Department of Correction facilities).

**Target Population:** Persons with a significant mental illness residing in a jail (not an Indiana Department of Correction or Federal facility).

**Target:** 7 Reviews
Outcome: For FFY 2010, IPAS accepted and opened for review seven allegations of abuse from individuals being detained within one of Indiana's county jails. By the close of the fiscal year, IPAS had completed work on four of the cases thus three remained open. In three cases, the client successfully, with IPAS assistance, self-advocated on their own behalf.

**Objective 1.6 was Met** as services were provided to seven individuals in the custody of a local jail who alleged abuse/neglect.

**Representative Sample Case Narrative for Objective 1.6**

IPAS intervened on behalf of a 31-year-old PAIMI eligible individual. IPAS first became involved when contacted by client's mother with allegations that her incarcerated son was being denied his psychotropic medications for treatment of his bipolar

disorder. IPAS investigated the matter and determined that the individual was not receiving his prescribed Klonopin, which was prescribed during his stay at a state hospital. The officials of the Knox Co. Detention Center justified their jail policy not to administer Klonopin due to its potentially addictive qualities. The timing of IPAS's involvement coincided with a scheduled Court appearance for the client. Thus, the Court ordered that his prescribed medication be resumed. IPAS further assisted the client in accessing the internal grievance process concerning the mental health services, which resulted in a psychiatric review and modifications to his treatment protocol.

**Objective: 1.7** Review selected incidents of serious occurrences of individuals residing in facilities designated as a psychiatric residential treatment facility (PRTF).

**Target Population:** Children with a significant mental illness residing in facilities a designated as a psychiatric residential treatment facility (PRTF).

**Target:** 3 Reviews

**Outcome:** For FFY 2010, IPAS accepted and opened for review three allegations of abuse or neglect of residents residing within a psychiatric residential treatment facility (PRTF). By the close of the fiscal year, IPAS had closed two of the incidents opened for review.

**Objective 1.7 was Met** as services were provided to three children residing in a psychiatric residential treatment facility (PRTF).

**Representative Sample Case Narrative for Objective 1.7**

"Dee's" mother called to request IPAS assistance. Another student reportedly had physically attacked Dee while she was a resident at Gibault. At the time of mother's contact, she alleged that her daughter had been attacked twice by the same student. In the prior incident, Dee's nose had been fractured.

IPAS intervened on behalf of the client initially reviewing Gibault's systemic and internal response to the attacks on Dee. Gibault's analysis concluded that, its staff followed the facility protocol concerning the care and treatment of the injured Dee. However in IPAS's review of the Gibault's procedures used for the reassignment of rooms to handle resident conflicts, the victim had been placed in the bed next to individual who assaulted her. IPAS raised concerns that Gibault's procedure appeared to be arbitrating done by staff members who were unaware of the alleged victim(s) and perpetrator(s). IPAS's advocacy resulted in a procedure change, which required increased documentation and review by staff of different disciplines prior to new room reassignments for residents.

**Objective: 1.8 (**Number unused this fiscal year)

**Objective: 1.9** Review allegations of abuse and neglect in juvenile detention facilities.

**Target Population:** Children with a significant mental illness residing in a juvenile detention facility. (Non Federal and non Indiana Department of Correction facilities (IDOC) facilities).

**Target:** 3 Reviews

**Outcome:** For FFY 2010, three allegations were opened for review; at the conclusion of the year none of IPAS's review had been completed thus, the three cases had to be carried into the new year.

It has been the historical experience of IPAS, seldom did prospective clients or families contact IPAS with concerns regarding treatment or educational issues in these settings. Thus for the year, IPAS initiated a plan to exercise its ability to engage in Monitoring activities which would hopefully generate prospective clients. Indiana currently has 22 local Juvenile settings, thus the Lake County Juvenile Detention Center was selected from a variety of criteria as the first site for IPAS to begin monitoring. As with any facility not familiar with IPAS, our right to conduct monitoring visits was initially, challenged. Following an initial period of education and negotiation concerning IPAS and its statutory authority, initial monitoring began. The notification letters regarding IPAS monitoring activities initially prompted inquires from several families. Those interests, concerns and requests focused mainly on representation for the criminal matters rather than conditions within the facility.

As the fiscal year ended, while monitoring was continuing, issues concerning IPAS being allowed unescorted access were still being addressed to address security and safety issues. These were being addressed as FY 2010 ended.

**Objective 1.9 was Met** as services were provided to three juveniles in the custody of a local detention center in which there was an allegation of abuse/neglect.

**Priority: 2** To reduce or eliminate the denial of rights and discrimination due to a mental illness diagnosis.

**Objective: 2.1** Review allegations on behalf of students where the school, due to a proposed or instituted change of educational placement or suspension or expulsion, has or will reduce educational services and advocate for the restoration of services provided in the least restrictive environment.

**Target Population:** Children with significant mental illness attending a Public School within Indiana.

**Target:** 18 Representations

**Outcome:** For FFY 2010, IPAS accepted 22 requests for representation in special education matters, at the close of the year six remained open.

**Objective 2.1 was Met** as services were provided to 22 children who either faced a reduction or already had experienced a reduction in their educational services because of their disability.

**Representative Sample Case Narrative for Objective 2.1**

The mother on the behalf of her PAIMI-eligible 10-year-old son contacted IPAS. She had been referred to IPAS by her advocate from IN*Source. Her concern was that her son's educational day had been reduced to a two-hour day, from the typical five-hour day. According to the school, the child's offense that warranted such reduction in his educational day was that he had been sleeping in his class.

IPAS informed, educated and provided technical assistance to the parent concerning her rights as they pertained to Indiana's Special Education regulations and the Individuals with Disabilities Education Act (IDEA). The strategy developed included IPAS's attendance at a Case Conference to provide direct advocacy services. The day following the parent's contact with the school, (as directed by IPAS) she called and informed IPAS that the school had reversed their position and her son was allowed to return to the school for full days. At this time, the parent withdrew her request for IPAS services, thus ending IPAS's involvement. At closure, the child was again reportedly attending full days without any further incidents being reported.

**Objective: 2.2** Represent individuals with a significant mental illness who allegedly have been subject of discrimination and was denied either services or access under the ADA Title 2 and 3, or Fair Housing Act.

**Target Population**: Individuals with significant mental illness alleging discrimination residing in the community.

**Target:** 3 Representations

**Outcome:** For FFY 2010, all three accepted requests for representation were concluded during the year.

**Objective 2.2 was Met** as services were provided to three individuals who allegedly have been subject of discrimination and was denied either services or access under the ADA Title 2 and 3, or Fair Housing Act.

**Representative Sample Case Narrative for Objective 2.2**

"Karen" a 48 year old contacted Indiana Protection and Advocacy Services with allegations that the Monroe Hospital, an acute care facility, refused to allow her service dog to accompany her into the health care facility. Karen indicated that she requires a psychiatric service animal to assist her in public places. The triggering incident reportedly arose when she had to seek emergency services, hospital staff would not permit her service animal to accompany her into the facility.

IPAS staff interviewed hospital staff and witnesses and determined that the dog's actions did not pose a "direct threat" to the health and safety of others. IPAS staff shared its findings with the Monroe Hospital Compliance Officer, whose subsequent investigation, concurred with IPAS's findings. The Compliance Officer described the incident as a serious break down of hospital protocol. He took full responsibility and assured Karen that she and her service animal are welcome at their facility. The Compliance Officer reported that several staff members were reprimanded and all hospital staff were required to attend an upcoming training concerning disability rights, access issues and service animals.

**Objective: 2.3** Represent individuals with a significant mental illness who allegedly have been subjected to disability based discrimination that appears to have systemic implication.

**Target Population:** Individual with significant mental illness who has been subjected disability based discrimination residing in Indiana.

**Target:** 2 Representations

**Outcome:** For FFY 2010, IPAS responded to two requests for assistance

**Objective 2.3 was Met** as services were provided on behalf of two individuals needing assistance in an area that had potential systemic impact for an issue that arose during the fiscal year outside of the adopted priorities. With the changes contained in instructions received from SAMSHA, which allows for modification to the year's submitted priorities during the year to address emerging issues, this objective was discontinued for FFY 2011.

**Representative Sample Case Narrative for Objective 2.3**

IPAS intervened on behalf of "Thomas" a 54-year-old resident of Johnson County. He contacted IPAS, expressing concerns that he was being barred from using the Franklin City Parks and Franklin College's library only because of his diagnosis of schizophrenia. IPAS staff in their review of the situation found that there was not an actual ban, but rather there had been a no trespass order, which had expired. IPAS was able to have police records updated to show that the no trespass order for the College had expired and the city parks pan had been lifted.

**Objective: 2.4** Represent individuals with a significant mental illness to ensure that medication or treatment complaints (other than abuse or neglect) are communicated to and fully addressed by the appropriate entity.

**Target Population:** Individuals with significant mental illness residing in the community that has treatment complaints.

**Target:** 21 Representations

**Outcome:** For FFY 2010, 7 remained open while 18 were closed for 25 total requests for assistance reviewed.

**Representative Sample Case Narrative for Objective 2.4**

**Objective 2.4 was Met** as services where provided on behalf of 25 individuals needing assistance in advocating for individual treatment rights while receiving services from a community mental health provider.

IPAS intervened on behalf of "Susan" a 22-year-old resident of Larue Carter Hospital, a state facility located in Indianapolis. Susan contacted IPAS with allegations and concerns that a specific staff member was treating her differently from the other residents. Specifically she was not being allowed to wear the clothing of choice that was her property. Additionally, Susan complained of the apparent contradiction of being told that she making progress, but while in the review treatment team meetings, the same staff would recommend further restrictions. IPAS staff provided her information concerning her rights. Additionally, IPAS assisted her in accessing both the internal and external grievance processes. Subsequent to Susan's filing of a grievance the staff member in question resigned. Susan has since progressed through the level system and is awaiting discharge back to the community.

**Objective: 2.5** Monitor internal grievance complaints of individuals residing in state operated facilities to ensure that complaints are addressed according to written policy and procedure.

**Target Population:** Individual with significant mental illness residing in one of the state operated facilities.

**Target:** 12 Reviews

**Outcome**: IPAS initiated 13 reviews under this objective for the year in two of the state's operated facilities. In 11 of the incidents, IPAS had completed the project's review leaving two for carryover into the next year.

**Objective 2.5 was Met** as services were provided on behalf of 13 individuals needing assistance in monitoring the internal grievance processes concerning their individual treatment rights while residing in one of the state's mental health treatment facilities.

**Representative Sample Case Narrative for Objective 2.5**

IPAS became involved at the request of a mother on the behalf of her adult son, "Gary", who was hospitalized at Richmond State Hospital (RSH). She stated that during her last visit, she noticed that Gary had a black eye. When she pressed him to explain how the injury had occurred, Gary alleged that staff had struck him. IPAS agreed to review the incident as well as the results of the internal investigation by RSH.

The assigned Advocate found that RSH staff had noticed the appearance of the injury and had completed an internal incident investigation. According to the RSH documentation, Gary had given three different accounts as to the circumstances that caused the injury to his eye. These were: 1) Staff hit him 5 or 6 times, while trying to get him to take his prescribed medication 2) Gary had hit himself in attempt to get staff in trouble, and 3) He fell against his bed as staff was administering his medication. Based upon staff interviews, the RSH investigator had concluded that the injuries were self-inflicted. This was the only scenario that Gary conveyed to the IPAS advocate.

IPAS found the review of the handling of the investigation by RSH appeared to have been complete, timely and done per their internal policy and practice. However, IPAS did discover a problem during its review. While RSH staff was conducting their investigation, the Gary filed a second grievance against the staff, which triggered another review by RSH. IPAS found that RSH Client Grievance provided for no notification to Gary as to the resolution or disposition of the second complaint.

Subsequently IPAS efforts resulted in the change of the internal complaint process, as RSH added steps to ensure that the client received notification as to the outcome of the process. Starting in April 2010, RSH began implementing its new policy (150.7) which provides for staff to inform the resident whom makes a complaint, of the results of the investigation. "Regardless, a written, final report is to be provided to the patient, including the steps taken to investigate the complaint, results of the process, date of the completion and by whom (staff name)." Thus, the expected outcome would affect all residents of RSH, which prior to the announced reduction of beds, served approximately 450 residents each year.

**Priority: 3** Increase awareness and effective self-advocacy by working with and supporting advocacy groups and organizations.

**Objective: 3.1** Attend the Resident/Human Rights Committee meetings of the facilities operated by the Indiana Department of Mental Health and Addictions.

**Target Population:** Persons with a significant mental illness residing in facilities operated by the Indiana Division of Mental Health and Addiction.

**Target:** 75 % of Meetings Attended

**Outcome:** Indiana has five adult state-operated psychiatric hospitals, which IPAS is typically an active participant in each of the facility's respective Human/Patient Rights Committee.

The basic, most general goal and purpose of all Resident/Human Rights Committees is to assist with protecting and enhancing the rights and dignity of persons receiving services at the state operated facilities while promoting the facility's code of organization ethics and the State of Indiana Code of Ethics. However, the more specific goal and purpose of each Resident/Human Rights Committee depends largely upon which facility the committee serves as well as said facility's population. One committee may review and resolve patient complaints and review proposed policies, which may affect patient rights', while another may review the specific treatment plan of the most difficult-to-treat patients, oftentimes requiring discussion of treatment modalities, which may also include rights implications.

IPAS staff uses these forums to raise concerns regarding systemic resident rights issues in addition to advocating for resident rights reading any proposed policy or procedure that comes before the committee as a non-voting member. Thus the impact of IPAS's efforts ranges from resolving single client issues, to educating other members on the committee and having systemic impact on hospital policies specific to that facility. Thus IPAS staff attended 38 of the 41 scheduled meetings at those facilities that had an IPAS staff assigned.

Examples of systemic impact include IPAS's raising concerns regarding the inconsistency of rules at Richmond State Hospital between units and wards. IPAS's staff argued that the lack of consistency between wards was confusing for both staff and residents. These inconsistencies caused some conflicts and frustrations from residents as they were moved from one unit to another. IPAS's concerns have resulted in a planned review by the facility's Human Rights Committee to determine what rules can be made consistent without impacting the unit/ward's overall treatment objectives and milieu.

**Objective 3.1 was Met** as IPAS staff participated in 92% (38 of 41) of the meetings held at facilities in which IPAS had a fulltime staff assigned.

**Objective: 3.2** Attend meetings of committees, groups or task forces selected by Indiana Protection and Advocacy which appear to have systemic implications concerning policies and practices affecting the State's response to disability rights for individuals with a significant mental illness.

**Target Population:** Individuals with significant mental illness residing in Indiana.

**Target:** 75 % of Meetings Attended

**Outcome:** The basic, most general goal and purpose of any committee or group attended by IPAS is to assist with protecting and enhancing the rights and dignity of persons with disabilities receiving services. However, the more specific goal and purpose of each group depends upon the mission and focus of the group. Some groups review proposed systemic policies that may affect individual rights. IPAS Advocates, use these forums to raise concerns regarding systemic rights issues in addition to advocating for individual rights, reading any proposed policy or procedure that comes before the committee as a non-voting member.

Thus, IPAS agreed to participate in the Mental Health Association in Marion County Adult Guardianship Committee. This Committee currently provides guardianship services for fifty-three (53) clients. Here IPAS-PAIMI advocates for the client's right to exercise as much as possible individual choice and decision within the context of a guardianship.

The past year represented the final year of the three-year SAMHSA grant: Alternatives to Restraint and Seclusion. IPASI representatives participate at both the facility level and state level committees to monitor and offer technical assistance in regards to rights as the state concluded the grant.

**Objective 3.2 was Met** as IPAS staff participated in 78% (11 of 14) of the meetings held at facilities in which IPAS had a fulltime staff presence.

**Objective: 3.3** Advocate for the adoption and implementation of rules by the Department of Education concerning the application and staff training regarding minimal standards to guide the use of restraint and/or seclusion in the schools.

**Target Population**: Children with significant mental illness attending a Public School within Indiana.

**Target:** 1 Rule/Policy Adoption

**Outcome:** In 2006 IPAS conducted a statewide survey, the results of which appeared in the 2008 IPAS study and analysis publication. Contained with that report, IPAS noted that 85 schools reported that they had no policies relative to seclusion or restraint. A sampling of these school corporations were resurveyed during the fourth quarter. 17 of the 25 schools responded to IPAS's inquiry.

Eight corporations reported that they have developed policies since the last survey. Four corporations reported that polices were currently in development, while four again reported that no policies have been developed. The remaining school reported that the IPAS request would be answered, "As the information was gathered".

One of the corporations responded that it is waiting for a developed policy to be provided by NEOLA®, a nationwide organization that consults with school corporations on policy development. Seventy-eight school corporations or approximately 30% of the state's schools reported to IPAS in 2006 that they subscribed to NEOLA®. This may be an indication of the possible number of school corporations in the state that will have educational seclusion and restraint policies implemented.

**Objective 3.3 was Met** as four additional schools had adopted policies addressing use of restraint and/or seclusion in the schools.

**Objective: 3.4** Publish a comprehensive report concerning the current practice of the use of restraint and seclusion in Children's Homes and Child Caring Institutions.

**Target Population:** Children with significant mental illness residing in a facility licensed either as a Private Secure Facility and Licensed Child Caring Institutions.

**Target:** 1 Rule/Policy Adoption

**Outcome:** Project is continuing into FFY 2011 as only 30 of the 97 unique (30.1%) providers choose to respond to IPAS' request concerning policies and procedures.

IPAS has chosen to seek the documentation from Indiana Department of Child Services (DCS) via the Public Access Law, hoping that as per the Indiana Administrative Code procedures, each provider must have DCS approval concerning use of Restraints prior to implementation. Additionally the provider must serve notification of changes in policies concerning the use of confinement rooms, while DCS approval is not required for implementation. The request for DCS records were initiated during the final quarter hence the need for the Project to continue next year for FFY 2011.

**Objective 3.4 was Not Met** as the information needed to complete the study had yet to be received.

## SECTION 3. PAIMI-ELIGIBLE INDIVIDUALS

**Provide the number of individual PAIMI-eligible individuals for the categories listed below. Count an individual *only once* during each FY reporting period (even if the client returned for services many times or if many intervention strategies were provided. Include individuals carried over from the previous year but *do not include individuals represented as part of a group or a legal class action, and individuals who receive only information or referral services*.**

**Please complete each of the following sections. DO NOT leave any blank spaces. If no individuals were served in any category, list zero. *Make sure that the total individuals served in each sub-category is consistent.* The total in 3.A.3. should equal the totals listed in each of the following categories: 3.C. Age of Individuals; 3.D. Gender of Individuals; and, 3.F. Individual Living Arrangements.**

### 3. A. NUMBER OF INDIVIDUALS SERVED WITH PAIMI FUNDS.

**3. A.1. *Total of PAIMI-eligible individuals who were receiving advocacy at start of FY.* _91___**

**[This category reflects the number of individuals supported with PAIMI Program funds or program income who had cases from the preceding FY still open on October 1. *DO NOT REPORT INDIVIDUALS SERVED WITH NON-FEDERAL DOLLARS IN THIS SECTION, report these individuals in Section 8].***

**3. A.2. *Total of new/renewed PAIMI-eligible individuals served during the FY.* _64_**

**[This is the number of individuals who had a case opened during the reporting period (October 1 and September 30). *Do not report individuals served with non-Federal dollars in this section, report these individuals in Section 8].***

**3. A.3. *Total of PAIMI-eligible individuals served in 3.A.1. & 3. A. 2.* _152_.**

**Reflects the total number of *individuals* served with PAIMI Program dollars, including program income, during the fiscal reporting period and is an unduplicated count of all PAIMI-eligible individuals who received individual case representation].**

**3. A.4. The number of PAIMI-eligible individuals who requested individual advocacy services who were not served within 30 days of initial contact either due to insufficient PAIMI funding 3.A.4.i. _48_ or non-priority issues 3.A.4.ii __844__ [include individuals who received other services such as information and referral in-lieu]. TOTAL 3.A.4. [Equals the sum of 3.A.4.i. &3.A.4.ii.] __892_.**

# SECTION 3. PAIMI-ELIGIBLE INDIVIDUALS

## 3. A.5. Identify populations, advocacy issues and activities (systemic, legislative, educational, training, etc.) from 3.A.4.i. and/or 3.A.4.ii. that will be addressed in the future.

IPAS has begun analysis of the call patterns and requests for services of those individuals not served relative to the area of the state as well as service provider in an effort to more strategically focus its services. In review of the past year the top three issues presented were as follows:

- Failure to provide appropriate mental health treatment (13%)
- Discharge planning or release from a residential care or treatment facility (5%)
- Inappropriate or excessive seclusion (5%)

Thus, the 2011 Priorities and Objectives continue to reflect a commitment to address issues related to neglect concerning treatment and discharge planning. IPAS has committed to continue its efforts addressing the use of seclusion and restraint. Additionally IPAS has identified a lack of request for services from specific geographic areas of the state. This information will be used to target outreach efforts.

| 3. B. NUMBER OF COMPLAINTS/PROBLEMS OF PAIMI-ELIGIBLE INDIVIDUALS. | Total 168 |
|---|---|

**[3.B. *refers to the total number of complaints/problems presented at the time the individual contacted the P&A for assistance. The number may be higher than the total number of PAIMI-eligible individuals served by the P&A because each individual may have more than one complaint/problem to be addressed].***

**3. C. AGE OF INDIVIDUALS* [See 42 U.S.C. 10804(a)(1)(4), 42 CFR 51.24 (a)]**

| 0 – 4 _0_ | 5 – 12 14 | 13 – 18 18 | 19- 25 15 | 25 –64 102 | 64+ 3 | Total 152 |
|---|---|---|---|---|---|---|

***The total of 3.C. should equal the total number of individuals served listed in 3. A.3**

**3. D. GENDER OF INDIVIDUALS***

| 3.D.1. Male 111 | 3.D.2. Female 41 | 3.D.3. Total* 152 |
|---|---|---|

***3.D.3. should equal the total number of individuals served listed in 3. A.3**

**3. E. ETHNICITY/RACIAL BACKGROUND OF PAIMI-ELIGIBLE INDIVIDUALS**

| | | | |
|---|---|---|---|
| 1. American Indian/ Alaska Native | 1 | 4. Hispanic/Latino | 7 |
| 2. Asian | 0 | 5. Native Hawaiian/ Other Pacific Islander | 0 |
| 3. Black/African American | 28 | 6. White | 116 |
| TOTAL | | | 152 |

| | |
|---|---|
| ***[The data in 3.E. is self-reported. Please do not question self-reported data. Each client may select one or more categories. The totals in this section may exceed those listed in 3.A.3., 3.C.3, or 3.D.3.***<br>***PAIMI STAFF MUST ASK AND REPORT THIS INFORMATION.*** | |

## SECTION 3. PAIMI-ELIGIBLE INDIVIDUALS

| 3. F. LIVING ARRANGEMENTS of INDIVIDUALS at INTAKE. | | | | | | TOTAL |
|---|---|---|---|---|---|---|
| 1 - Independent | | | | | | 10 |
| 2 - Parental or other family home | | | | | | 30 |
| 3 - Community residential home for children/youth (0-18 years), e.g. , supervised apartment, semi-independent, halfway house, board & care, small group home (3 or less). | | | | | | 2 |
| 4 - Adult community residential home, e. g., supervised apartment, semi-independent, halfway house, board & care, small group home (3 or less). | | | | | | 7 |
| 5 - *Non-medical community-based residential facility for children & | | | | | | 0 |
| 6 - Foster Care | | | | | | 0 |
| 7 - *Nursing Facilities, including Skilled Nursing Facilities(SNF) | | | | | | 0 |
| 8 - *Intermediate Care Facilities (ICF) | | | | | | 0 |
| 9 - * Public and Private General Hospitals, including emergency rooms. | | | | | | 0 |
| 10 - * Other health facility | | | | | | 0 |
| 11 - Psychiatric wards (public or private) | | | | | | 6 |
| 12 - Public (Municipal or State-operated) Institutional Living Arrangements, (e.g., hospital treatment center/school or large group home 4+ beds). | | | | | | 47 |
| 13 - Private Institutional Living Arrangement (e.g., hospital or treatment center, school or large group home more than 3 beds). | | | | | | 5 |
| 14 - Legal Detention/Jail/Detention Center | | | | | | 9 |
| 15 - State Prison | | | | | | 35 |
| 17 – Homeless | | | | | | 1 |
| 18 - Federal Facility (List) | a. Detention | b. Prison | c. Veterans Hospital | d. Military | e. Other (describe) | 0 |

| TOTAL | 152 |
|---|---|

***The TOTAL for 3.F. equals the total listed in 3.*** **A.3** *Expanded authorities under the Children's Health Act of 2000, Part H, section 592(a) and Part I Section 595, as codified respectively under Title V. Public Health Service Act, 42 U.S.C. at 290ii- 290ii and 290jj-1 - 290jj(2).

## SECTION 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

| 4. A.1. AREAS OF ALLEGED ABUSE: **Number of complaints/problems –** Make every effort to report within the following categories: | Number from Closed Cases only | OUTCOMES | | | |
|---|---|---|---|---|---|
| | TOTAL | A | B | C | D |
| a. Inappropriate or excessive medication | 2 | 0 | 0 | 0 | 2 |
| b. Inappropriate or excessive | 0 | 0 | 0 | 0 | 0 |
| 1. Physical restraint | 5 | 0 | 0 | 1 | 4 |
| 2. Chemical restraint* | 0 | 0 | 0 | 0 | 0 |
| 3. Mechanical restraint* | 1 | 0 | 0 | 0 | 1 |
| 4. Seclusion | 0 | 0 | 0 | 0 | 0 |
| c. Involuntary medication | 0 | 0 | 0 | 0 | 0 |
| d. Involuntary Electrical Convulsive Therapy (ECT) | 0 | 0 | 0 | 0 | 0 |
| e. Involuntary aversive behavioral therapy | 0 | 0 | 0 | 0 | 0 |
| f. Involuntary sterilization | 0 | 0 | 0 | 0 | 0 |
| g. Failure to provide appropriate mental health treatment | 10 | 1 | 0 | 3 | 6 |
| h. Failure to provide needed or appropriate treatment for other serious medical problems | 5 | 1 | 0 | 0 | 4 |
| i. Physical Assault | 0 | 0 | 0 | 0 | 0 |
| 1. Serious injuries related to the use of seclusion and restraint.* | 2 | 0 | 0 | 0 | 2 |
| 2. Serious injuries NOT related to seclusion and restraint. | 2 | 0 | 0 | 0 | 2 |
| j. Sexual assault | 1 | 1 | 0 | 0 | 0 |
| k. Threats of retaliation or verbal abuse by facility staff | 5 | 2 | 0 | 2 | 1 |
| l. Coercion | 0 | 0 | 0 | 0 | 0 |
| m. Financial exploitation | 1 | 0 | 0 | 1 | 0 |
| n. Suspicious death | 0 | 0 | 0 | 0 | 0 |
| o. Other - Specify the type of complaint. Please describe on a separate sheet. [This number should be less than 1% of the total # of abuse complaints]. | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 34 | 5 | 0 | 7 | 22 |

*Expanded authorities under the Children's Health Act of 2000, Part H, section 592(a) and Part I Section 595, as codified respectively under Title V. Public Health Service Act, 42 U.S.C. at 290ii- 290ii and 290jj-1 -290jj-2]. See also, the PAIMI Act 42 U.S.C. 10802(1)(A) - (D).

## SECTION 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

### 4. A.2. ABUSE OUTCOME STATEMENTS

**For each area of alleged abuse in 4.A.1., choose one or more outcome statements that best describe or relate to the complaint/problem area. Enter the appropriate letter(s) and provide the number of outcomes per category selected in the "outcome" columns (A, B, C, and D).**

**A. Persons with disabilities whose environment was changed to increase safety or welfare.**

**B. Positive changes in policy, law or regulation re: abuse in facilities (describe facility where impact was made).**

**C. Validated abuse complaints that were favorably resolved as a result of P&A intervention.**

**D. Other indicators of success or outcomes that resulted from P&A involvement (explain).**

**IPAS investigated and unable to substantiate abuse - 14**

**Issue resolved without IPAS intervention - 2**

**Provided technical support to self-advocate – 3**

**Assisted client to file complaint; did not prevail – 1**

**Case closed due to lack of cooperation by client - 2**

### 4. A.3. ABUSE COMPLAINTS DISPOSITION

**For closed cases listed in Table 4.A.1., provide the number of abuse complaints/ problems for each disposition category.**

| | |
|---|---|
| **a. Number of complaints/problems determined after investigation not to have merit.** | **3** |
| **b. Number complaints/problems withdrawn or terminated by client.** | **2** |
| **c. Number of complaints/problem favorably resolved in the client's favor.** | **28** |
| **d. Number of complaints/problem not favorably resolved in the client's favor.** | **1** |
| **e. TOTAL number of complaints/problem addressed from closed cases.** ***[The sum of Items 4.A.3. a - d equals the total for 4.A.3.e. which must equal the total in Table 4. A.1.].*** | **34** |

## SECTION 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

| 4. B.1. AREAS OF ALLEGED NEGLECT – [failure to provide for appropriate . . .] - Number of Complaints/Problems: | Number from ***Closed Cases*** only. TOTAL | OUTCOMES | | | | |
|---|---|---|---|---|---|---|
| | | A | B | C | D | E |
| a. Admission to residential care or treatment facility | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Transportation to/from residential care or treatment facility | 1 | 0 | 0 | 0 | 0 | 1 |
| c. Discharge planning or release from a residential care or treatment facility | 1 | 0 | 0 | 0 | 0 | 1 |
| d. Mental health diagnostic or other evaluation (does not include treatment) | 0 | 0 | 0 | 0 | 0 | 0 |
| e. Medical (non-mental health related) diagnostic or physical examination | 0 | 0 | 0 | 0 | 0 | 0 |
| f. Personal care (e.g., personal hygiene, clothing, food, shelter) | 3 | 0 | 0 | 0 | 2 | 1 |
| g. Physical plant or environmental safety | 0 | 0 | 0 | 0 | 0 | 0 |
| h. Personal safety (client-to-client abuse) | 7 | 3 | 0 | 1 | 0 | 3 |
| i. Written treatment plan | 0 | 0 | 0 | 0 | 0 | 0 |
| j. Rehabilitation/vocational programming | 0 | 0 | 0 | 0 | 0 | 0 |
| k. Other. [Please describe. However, make every effort to report within the above categories. | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 12 | 3 | 0 | 1 | 2 | 6 |

## SECTION 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

### 4. B.2. NEGLECT OUTCOME STATEMENTS

**For each area of alleged neglect listed in Table 4.B.1. , choose one or more outcome statements that either best described or related to the complaint/problem. Enter the appropriate letter(s) and provide the number of outcomes per category selected in the "outcome" columns (A, B, C, D, and E).**

**A. Validated neglect complaints that have a favorable resolution as a result of P&A intervention.**

**B. Positive changes in policy, law, or regulation regarding neglect in facilities (describe facilities).**

**C. Persons with disabilities discharged consistent with their treatment plan after P&A involvement.**

**D. Persons with disabilities whose treatment plans met selected criteria.**

**E. Other indicators of success or outcomes that resulted from P&A involvement (explain).**

**Provided technical support to self-advocate – 2**
**Advocated for policy change; did not prevail – 1**
**IPAS investigated and unable to substantiate neglect – 2**
**Client withdrew from case; counseled client on access to rights protection - 1**

### 4. B.3. NEGLECT COMPLAINTS DISPOSITION

**For closed cases listed in Table 4.B.1., provide the numbers of neglect complaints or problem areas for each disposition category. [See, 42 U.S.C. 10802(5)].**

| | |
|---|---|
| **a. Number of complaints/problems determined after investigation not to have merit.** | **0** |
| **b. Number complaints/problems withdrawn or terminated by the client.** | **3** |
| **c. Number of complaints/problem favorably resolved in the client's favor.** | **8** |
| **d. Number of complaints/problem not favorably resolved in the client's favor.** | **1** |
| **e. TOTAL number of complaints/problem addressed from closed cases.** ***[The sum of Items 4.B.3. a - d equals the total for 4.B.3.e. which must equal the total in Table 4. B.1.].*** | **12** |

| SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS | | | | | |
|---|---|---|---|---|---|
| **4. C.1. AREAS OF ALLEGED RIGHTS VIOLATIONS ; Number of Complaints Problems** | **Number from closed Cases only TOTAL** | **Outcomes** | | | |
| | | **A** | **B** | **C** | **D** |
| a. Housing Discrimination | 1 | 0 | 1 | 0 | 0 |
| b. Employment Discrimination | 0 | 0 | 0 | 0 | 0 |
| c. Denial of financial benefits/ entitlements (e.g., SSI, SSDI, Insurance) | 1 | 0 | 1 | 0 | 0 |
| d. Guardianship/ Conservator problems | 0 | 0 | 0 | 0 | 0 |
| e. Denial of rights protection information or legal assistance | 8 | 3 | 3 | 1 | 1 |
| f. Denial of privacy rights (e.g., congregation, telephone calls, receiving mail) | 0 | 0 | 0 | 0 | 0 |
| g. Denial of recreational opportunities (e.g., grounds access, television, smoking) | 0 | 0 | 0 | 0 | 0 |
| h. Denial of visitors | 1 | 1 | 0 | 0 | 0 |
| i. Denial of access to or correction of records | 1 | 0 | 1 | 0 | 0 |
| j. Breach of confidentiality of records (e.g., failure to obtain consent before disclosure) | 1 | 0 | 1 | 0 | 0 |
| k. Failure to obtain informed consent (see also, involuntary treatment) | 0 | 0 | 0 | 0 | 0 |
| l. Failure to provide education (consistent with IDEA and state requirements) | 16 | 8 | 3 | 0 | 5 |
| m. Advance directives issues | 0 | 0 | 0 | 0 | 0 |
| n. Denial of parental/family rights | 0 | 0 | 0 | 0 | 0 |
| o. Consumer financial issues | 2 | 0 | 1 | 0 | 1 |
| p. Immigration issues | 0 | 0 | 0 | 0 | 0 |
| q. Criminal justice issues | 1 | 0 | 0 | 0 | 1 |
| r. Denial of community habilitation services | 1 | 0 | 0 | 0 | 1 |
| s. Health insurance/managed care issues | 1 | 1 | 0 | 0 | 0 |
| t. Other. [Please describe separately. Make every effort to report within the above categories.]:<br>Decision-making about elective health-care<br>Issues regarding treatment plan<br>Access to public buildings in the community<br>Notifications to guardian about treatment issues<br>Failure by facility to follow complaint | 5 | 1 | 2 | 0 | 2 |

| | | | | | |
|---|---|---|---|---|---|
| **procedure** | | | | | |
| **TOTAL (Sum of items a. - t.)** | **39** | **14** | **13** | **1** | **11** |

## SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

### 4. C.2. RIGHTS VIOLATIONS OUTCOME STATEMENTS

**For each category of alleged rights violation listed in Table 4.C.1., choose one or more outcome statements that either best described or related to the complaint/problem. Enter the appropriate letter(s) and provide the number of outcomes per category selected in the "outcome" columns (A, B, C, or D).**

**A. Persons with disabilities served by the P&A whose rights were restored as a result of P&A Intervention.**

**B. Persons with disabilities whose personal decision making was maintained or expanded as a result of P&A intervention.**

**C. Policies or laws changed and other barriers to personal decisions making eliminated as a result of P&A intervention.**

**D. Other outcomes as a result of P&A involvement:**
**Provided technical support to self-advocate – 6**
**Case closed due to lack of cooperation by client – 2**
**Advocated for policy change; did not prevail – 1**
**Staff received retraining on procedures – 1**
**Services being received were found to be appropriate - 1**

### 4. C.3. RIGHTS VIOLATIONS DISPOSITION

**For closed cases listed in Table 4.C.1., provide the numbers of rights complaints or problem areas for each disposition category.**

| | |
|---|---|
| **a. Number of complaints/problems determined after investigation not to have merit.** | **0** |
| **b. Number complaints/problems withdrawn or terminated by client.** | **8** |
| **c. Number of complaints/problems favorably resolved in the client's favor.** | **31** |
| **d. Number of complaints/problems not favorably resolved in the client's favor** | **0** |
| **e. The TOTAL number of complaints/problem addressed from closed cases. *[The sum of items 4.C.3. a - d equals the total for 4.C.3.e. which must equal the total in Table 4. C.1.].*** | **39** |

## SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

### 4. D.1. INTERVENTION STRATEGIES

**Report the number of intervention strategies and the outcomes used to address each individual complaint/problem area in Section 4. D.3.**

***Some clients may have more than one complaint/problem and each may require more than one intervention strategy, therefore, the total number of intervention strategies used may exceed the total number of individuals served.***

***DO NOT REPORT EACH PHONE CALL, LETTER, MEETING OR OTHER ACTION TAKEN ON BEHALF OF A CLIENT AS A SEPARATE INTERVENTION STRATEGY*.**
**[Referrals, counseling, and negotiation are considered cumulative processes].**
**See Glossary for the definitions of "Intervention Strategies.**

### 4. D. 2. INTERVENTION STRATEGY OUTCOMES

| Strategy | Outcomes | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Total | A | B | C | D | E | F | G |
| 1. Short Term Assistance | 28 | 21 | 18 | 25 | 18 | 1 | 5 | 5 |
| | | | | | | | | |
| 2. Abuse/Neglect Investigations | 44 | 28 | 24 | 38 | 28 | 4 | 33 | 2 |
| | | | | | | | | |
| 3. Technical Assistance | 9 | 7 | 6 | 9 | 8 | 0 | 0 | 1 |
| | | | | | | | | |
| 4. Administrative Remedies | 1 | 0 | 1 | 1 | 1 | 0 | 1 | 0 |
| | | | | | | | | |
| 5. Negotiation/ Mediation | 3 | 3 | 3 | 3 | 3 | 0 | 0 | 0 |
| | | | | | | | | |
| 6. Legal Remedies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | |
| | | | | | | | | |

# SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

## 4. D.3. OUTCOME STATEMENTS FOR COMPLAINTS/PROBLEMS OF INDIVIDUALS

**As applicable, for each area of client advocacy activity listed in 4.D.2., select one (1) or more of the following outcome statements that either best describe or relate to the complaint(s)/problem(s) of PAIMI-eligible individuals. Record your choices in 4.D.2.**

**Enter the appropriate letter(s) in the "outcome" column of Table 4.D.3.**

**A. Persons with disabilities (or their family members) served by the P&A whose complaint of abuse, neglect, or rights violation was remedied by the P&A.**

**B. Persons with disabilities (or their family members) who secured access to administrative remedies, received education or training about their rights, and as a result were empowered to become more effective self advocates.**

**C. Persons with disabilities who secured information about their rights and rights enforcement strategies as a result of P&A intervention.**

**D. Persons with disabilities who advocated on their own behalf as a result of P&A intervention.**

**E. Allegations of abuse or neglect that were substantiated by P&A.**

**F. Allegations of abuse or neglect that were not substantiated by P&A.**

**G. Other outcomes as a result of P&A involvement.**

## SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

### 4.E. DEATH INVESTIGATION ACTIVITIES

**See, the PAIMI Act 42 U.S.C. at 10801(b)(2)(B) and 10802(1), and PAIMI Program expanded authorities under the Children's Health Act of 2000, Part H, section 592(a) and Part I Section 595, as codified respectively under Title V. Public Health Service Act, 42 U.S.C. at 290ii- 290ii and 290jj-1 - 290jj-2.**

**4. E.1. The number of deaths of PAIMI-eligible individuals reported to the P&A for investigation by the following entities:**

**4. E.1. a. The State 0**

**b. The Center for Medicaid & Medicare Services (Regional Offices). 0**

**c. Other Sources. Briefly list the source for each death reported in this category, e.g., newspaper, concerned citizen, relative, etc. 4**

**d. TOTAL 4**

**4. E.1.e.** ***If the information requested in 4.E.1. was not available, please explain.***

| **4. E.2. All P&A Death investigations conducted involving PAIMI-eligible individuals related to the following:** | **Total** |
|---|---|
| **a. Number of deaths investigated involving incidents of seclusion (S).** | **0** |
| **b. Number of death investigated involving incidents of restraint (R).** | **0** |
| **c. Number of deaths investigated *NOT* related to incidents of S & R.** | **2** |
| **d. Total Number of deaths investigated [Sum of 4.E.2. a-c].** | **2** |

# SECTION. 4. COMPLAINTS/PROBLEMS of PAIMI-ELIGIBLE INDIVIDUALS

## 4.E. DEATH INVESTIGATION ACTIVITIES

### 4.E.3. If you reported deaths in categories 4.E.2.a., 4.E.2.b., and/or 4.E.2.c., then please provide the following information on one (1) death from each category, as appropriate:

- **A brief summary of the circumstances about the death.**
- **A brief description of P&A involvement in the death investigation.**
- **A summary of the outcome(s) resulting from the P&A death investigation.**

IPAS-PAIMI's approach to a death of an individual with mental illness is to monitor the facility's internal investigation as well as any investigation completed by an outside regulatory agency. However the majority of the deaths that IPAS is made aware of occur in the state operated behavioral facilities for which IPAS' denial of access to records continued to be an issue for much of this reporting period. Presently, IPAS has nine cases in which records were being sought to complete a full final analysis, thus with the decision of the 7th Circuit, IPAS had just begun to receive those records at the conclusion of the fiscal year.

Unlike in prior years, none of the deaths that IPAS became aware of concerned an individual who was not a resident of a state operated facility. Prior to the court's decision for this sample case, IPAS reviewed all the available information regarding the death of "David" a 47-year-old male resident of Madison State Hospital. David had been residing on the medical services unit of the state hospital the preceding three years due a multitude of health issues. Five days prior, he had been diagnosed with aspirated pneumonia. Given the circumstances prior to David's death, it appeared that the facility was correct in their assessment not to convene a Sentinel Event Root Cause Analysis review.

## SECTION 5. INTERVENTIONS on BEHALF of GROUPS of PAIMI-ELIGIBLE INDIVIDUALS

**This section captures information, which is *NOT* reflected in previous sections of this report, on how the P&A program used its PAIMI Program funds (including PAIMI Program income) *to support non-individual client activities* To complete Table 5.F. *TYPES of INTERVENTIONS, refer to the guidance in Sections 5.A. – 5.E.***

**Under each intervention, as applicable, report each annual program priority activities for the FY & the other information requested. The items listed in the table's left column and the numbers reported for each category should relate to the narrative section that follows.**

### 5. A. *GUIDANCE FOR REPORTING NUMBERS OF INDIVIDUALS POTENTIALLY IMPACTED BY P&A INTERVENTIONS*

| TYPES OF INTERVENTION | GUIDANCE FOR DETERMINING NUMBER* OF INDIVIDUALS * [The number of persons potentially impacted within the fiscal year for which the PPR is submitted]. |
|---|---|
| GROUP ADVOCACY (non-litigation) | Estimated number of people with disabilities impacted by this change, i.e., Count of People with Disabilities (PWD) that are normally impacted by this practice, policy and or structure. |
| INVESTIGATIONS (non-death related) | Estimated number of PWD impacted by this change. |
| FACILITY MONITORING SERVICES | Estimated number of PWD impacted. (i.e., Count of PWD living in facility) |
| COURT ORDERED MONITORING | Estimated number of PWD impacted by this change, (i.e., Count of PWD impacted by COM) |
| CLASS LITIGATION | Estimated number of PWD impacted by this change (i.e., Count of PWD impacted by this litigation). |
| LEGISLATIVE & REGULATORY ADVOCACY | Estimated number of PWD impacted by this change, (i.e., Count of PWD that are normally impacted by this practice, policy and or structure) |
| OTHER | Estimated number of PWD impacted by this change, (i.e., Count of PWD impacted specified intervention). |

## SECTION 5. INTERVENTIONS on BEHALF of GROUPS of PAIMI-ELIGIBLE INDIVIDUALS

### 5. B. GUIDANCE FOR DETERMINATION OF *CONCLUDED SUCCESSFULLY** FOR INTERVENTIONS ON BEHALF OF GROUPS OF PAIMI-ELIGIBLE INDIVIDUALS.

***Interventions reported in the Table 5. A., are considered to be concluded successfully if they meet any one of the following six (6) positive outcome statements:***

1. **The intervention resulted in a positive change in a policy, law, regulation, or other barrier for persons with disabilities.**
2. **The intervention changed the environment to increase safety or welfare for persons with disabilities**
3. **The intervention resulted in a positive change through the restoration of client rights, the expansion or maintenance of personal decision-making, or the elimination of other barriers to personal decision-making for persons with disabilities**
4. **The intervention resulted in persons with disabilities securing access to administrative or judicial processes.**
5. **The intervention resulted in persons with disabilities securing information about their rights and strategies to enforce their rights.**
6. **The intervention resulted in persons with disabilities taking action to advocate on their own behalf.**

## SECTION 5. INTERVENTIONS on BEHALF of GROUPS of PAIMI- ELIGIBLE INDIVIDUALS

### 5. C. GUIDANCE FOR DETERMINATION OF *CONCLUDED UNSUCCESSFULLY** FOR INTERVENTIONS ON BEHALF OF GROUPS OF PAIMI-ELIGIBLE INDIVIDUALS.

***Intervention activities reported in Table 5.F. ARE CONCLUDED UNSUCCESSFULLY IF THEY DO NOT MEET ANY OF THE OUTCOMES STATEMENTS IN SECTIONS 5.A. OR 5.B.***

### 5.D. GUIDANCE FOR DETERMINATION OF *ONGOING* INTERVENTIONS ON BEHALF OF GROUPS OF PAIMI-ELIGIBLE INDIVIDUALS

**SAMHSA/CMHS recognizes that *LEGISLATIVE, LEGAL AND/OR OTHER SYSTEMIC REFORM ACTIVITIES (E.G., FACILITY MONITORING, LITIGATION PREPARATION, ETC) MAY TAKE MORE THAN ONE FISCAL YEAR TO COMPLETE* and sometimes these types of interventions take years before they are completed successfully. *It is these types of situations where the use of ongoing is most appropriate. The interventions reported in Table 5. F. are considered ONGOING, IF THEY WERE STARTED IN EITHER A PRIOR YEAR OR THE CURRENT FISCAL YEAR AND WERE NOT CONCLUDED BY 9/30 OF THIS FY.***

| SECTION 5. INTERVENTIONS on BEHALF of GROUPS of PAIMI-ELIGIBLE INDIVIDUALS | | | | |
|---|---|---|---|---|
| **5. E. TYPES OF INTERVENTIONS** | **Potential number of Individuals Impacted** | **Concluded Successfully** | **Concluded Unsuccessfully** | **On-going** |
| **1. Group Advocacy non-litigation** | | | | |
| **Participating in the HRC at the State Operated Facilities** | Approx **2,095** | | | **XXX** |
| **2. Investigations *(non-death related)*** | | | | |
| | | | | |
| **3. Facility Monitoring Services** | | | | |
| | | | | |
| **4. Court Ordered Monitoring** | | | | |
| | | | | |
| **5. Class Litigation** | | | | |
| **Department of Correction lawsuit** | Approx **4,476** | | | **XXX** |
| **Larue Carter Records Access Lawsuit** | Approx **2,095** | | | **XXX** |
| **6. Legislative & Regulatory Advocacy** | | | | |
| **Restraint and Seclusion policy and procedures for Public School settings** | Approx **85,791** | | | **XXX** |
| **7. Other** | | | | |
| | | | | |
| **TOTAL** | **94,457** | | | |

# SECTION 5. INTERVENTIONS on BEHALF of GROUPS of PAIMI-ELIGIBLE INDIVIDUALS

**In the PAIMI Application [at Section IV.2.2.], you were instructed to provide informat on the objectives for these types of interventions in sequential steps that are achievable within the annual reporting period, such as, conducting research, identify legal issues, filing the class action, etc.**

**5. F. In the space below, *provide at least ONE (1) EXAMPLE that reflected the outcome of EACH sub-category listed in Table 5.E.* In the narrative for each example briefly describe the PAIMI Program activity, include factual information (who, what, when, where, how) and the outcome(s) that resulted from the intervention.**

**Use work examples that illustrate the impact of PAIMI Program activities, especially how the activities made a difference to the clients served, such as, improved quality of life, etc. If PAIMI Program funds were used to support any of the above activities, then describe how their availability furthered the purposes of the PAIMI Act.**

**INSERT ADDITIONAL PAGES INTO THIS SECTION AS NEEDED.**

## SECTION 5 (1.) Group Advocacy non-litigation Currently still ongoing

**Case Example for Group Advocacy non-litigation**

IPAS participated, as funding allowed, in the Resident/Human Rights Committee meetings at state operated mental health facilities. The basic, most general goal and purpose of all Resident/Human Rights Committees is to assist with protecting and enhancing the rights and dignity of persons receiving services at the state operated facilities. However, the more specific goal and purpose of each Resident/Human Rights Committee depends largely upon which facility the committee serves as well as said facility's population. One committee may review and resolve patient complaints and review proposed policies that may affect patient rights', while another may review the specific treatment plan of the most difficult-to-treat patients, often times requiring discussion of treatment modalities that may also include rights' implications.

As IPAS continued its advocacy efforts in the area of Restraint and Seclusion reduction, staff at one facility used the Human Rights Committee as a forum to raise awareness of Trauma-Informed Care to be raised within the committee at Larue Carter Hospital as a topic issue. It is hoped that IPAS can continue to facilitate Larue Carter Hospital internal interest toward Trauma-Informed Care.

## SECTION 5 (5.) Class Litigation Currently still ongoing

**Case Example for Class Litigation**

**Department of Correction lawsuit:**

IPAS won approval from the court regarding its request for class certification of those prisoners with serious mental illness who are housed in isolated settings within the Indiana Department of Correction (IDOC). During the waning months of the fiscal year, IPAS took depositions from Indiana Department of Correction (IDOC) staff and mental health staff at multiply sites.

The potential impact of this lawsuit is conservatively estimated at 4,476 individuals or 16% of the IDOC bed capacity. The rate of 16% is from the 1999 report issued by the Bureau of Justice Statistics, U.S. Department of Justice concerning the estimated rate of mental illness of prisoners.

## SECTION 5 (6.) Legislative & Regulatory Advocacy **Currently still ongoing**

**Case Example of Legislative & Regulatory Advocacy**

IPAS's call for a state mandate in either policy or regulation has gone unheeded. In December of 2009 our SEA (Indiana Department of Education) did issue a policy statement and draft policy to all of the state's school corporations in which it "…*recommends that schools and school corporations address the use of student seclusion and restraint as part of the school's written discipline rules*".

In our 2006 statewide survey, the results of which appeared in the 2008 IPAS study and analysis publication, 85 schools reported that they had no policies relative to seclusion or restraint. A sampling of these school corporations were resurveyed during the year. Of the 25 schools contacted 17 responded. Eight corporations reported that they have developed policies since the last survey. Four corporations reported that polices were currently in development, while four again reported that no policies have been developed. The remaining school reported that the IPAS request would be answered, "As the information was gathered".

One of the corporations responded that it is waiting for a developed policy to be provided by NEOLA®, a nationwide organization that consults with school corporations on policy development. Seventy-eight school corporations or approximately 30% of the state's schools reported to IPAS in 2006 that they subscribed to NEOLA®. Hence with the NEOLA® development, many more of the school corporations in the state that will potentially adopt polices concerning educational seclusion and restraint.

## SECTION 6. NON-CLIENT DIRECTED ADVOCACY ACTIVITIES

### 6. A. INDIVIDUAL INFORMATION AND REFERRAL (I&R) SERVICES. Refer to the Glossary for the definition of I& R. [See also, PAIMI Rules, 42 CFR 51.24].

| | |
|---|---|
| **Provide the number of PAIMI Program I&R services.** | **TOTAL 882** |

### 6.B. STATE MENTAL HEALTH PLANNING ACTIVITIES

***Briefly list P&A collaboration/involvement in State Mental Health planning activities.***

As an agency, IPAS, historically, is not invited to be a member for any of the state's Division of Mental Health And Addiction planning committees. Members of IPAS do attend and monitor the public portions of selected committees involved in state planning activities. However, the chairperson of the PAC is a standing member of the Indiana Commission on Mental Health and the Mental Health Block Grant Planning Council.

### 6. C. EDUCATION, PUBLIC AWARENESS ACTIVITIES AND/OR EVENTS

**6.C.1. List the number of public awareness activities or events AND the number of individuals who received the information. [Refer to the Glossary].**

| | |
|---|---|
| **6. C.1. a. Number of public awareness activities or events.** | **Total 22** |
| **6. C.1. b. Number of individuals receiving the information.** | **Total 3255** |
| **6. C.2. Number of education/training activities undertaken.** | **Total 64** |
| **6.C.2 refers to either the number of training programs sponsored by the P&A or the number of events sponsored by another organization *WHERE P&A STAFF ARE THE TRAINERS*. *The training must have provided specific information to participants regarding their rights. If the P&A only provided general program information then report the number of individuals trained in section 6.C.1.b.* [PAIMI Rules 42 CFR 51.31(c)].** | **Total** |
| **6. C.3. Number (approximate) of persons trained. *[Only include those individuals who attended a 6.C.2. type education/training program(s). See PAIMI Rules 42 CFR 51.31].*** | **Total .....2709** |

# SECTION 6. NON-CLIENT DIRECTED ADVOCACY ACTIVITIES

## 6. C. EDUCATION, PUBLIC AWARENESS ACTIVITIES AND/OR EVENTS

**DISSEMINATION ACTIVITIES. Provide the number of articles, films, reports, etc. developed/produced. Provide an estimate for the number of people who received the information. For example, an article published about the P&A in a newspaper with a circulation of 200,000 readers; a television appearance on a station with 100,000 viewers in that time spot, etc.**

## 6. C.4. OUTCOME STATEMENTS for DISSEMINATION ACTIVITIES

**For each non-client directed advocacy activity listed in the Table 6.C.5., choose one or more outcome statements that either best describe or relate to the TYPE of ACTIVITY. Enter the appropriate letter(s) and provide the number of outcomes per category selected in the "outcome" columns (A, B, and C).**

| |
|---|
| **A. Persons who received information about the P&A and its services.** |
| **B. Persons disabilities (or their family members) who received education or training about their rights, enabling them to be more effective self advocates.** |
| **C. Other outcomes that resulted from PAIMI Program involvement.** |

## SECTION 6. NON-CLIENT DIRECTED ADVOCACY ACTIVITIES

| 6. C.5. TYPES OF DISSEMINATION ACTIVITIES | NUMBER OF ITEMS | NUM BER OF EVENTS | # of persons who received the information | OUTCOMES | | | |
|---|---|---|---|---|---|---|---|
| | | | | Total A - C | A | B | C |
| a. Radio/TV appearances. | | | | | | | |
| b. Newspaper articles (attach copies of articles). | 7 | 7 | 881,258 | 881,258 | | | 881,258 |
| c. Public Services Announcements (PSA), videos/films/, etc. | | | | | | | |
| d. Reports | | | | | | | |
| e. Publications, including articles in Professional journals. | | | | | | | |
| f. Other P& A disseminated information, includes general training, outreach activities or presentations, brochures and handouts that *were not* included/counted under training activities). | 17,158 | 88 | 6,160 | 6,160 | 3,461 | 2,709 | |
| g. Number Website hits, include visits. | 1 | 1 | 63,425 | 63,425 | 63,425 | | |
| h. Describe other media activities. | | | | | | | |
| TOTALS | 17,166 | 96 | 950,843 | 950,843 | 66,886 | 2,709 | 881,258 |

## SECTION 7. GRIEVANCE PROCEDURES [42 CFR Section 51.25]

**7. The PAIMI Rules mandate that the P&A system shall establish procedures to address grievances from: 1) Clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the program [42 CFR 51.25(a)(1)]; and 2) Individuals who have received or are receiving mental health services in the State, family members of such representatives, or representatives of such individuals or family members to assure that the eligible P&A system is operating in compliance with the Act [42 CFR 51.25(a)(2) - a systemic/program assurance grievance policy.]**

**7. a. Do you have a systemic/program assurance grievance policy, as mandated by 42 CFR 51.25(a)(2)? Yes XXX If No, please develop one ____**

**7.1. The number of grievances filed by PAIMI-eligible clients, including representatives or family-members of such individuals receiving services during this fiscal year. TOTAL _1**

**7.2. The number of grievances filed by prospective PAIMI-eligible clients (those who were not served due to limited PAIMI Program resources or because of non-priority issues. TOTAL ___0__**

**7.3. Total [Add 7.1 & 7.2] __1__ [42 CFR Section 51.25(a)(1),(2)]**

**7.4. The number of grievances appealed to:**

| | | | |
|---|---|---|---|
| **7. 4.a. The Governing Authority/Board** | **Total 1** | **7. 4.b. The Executive Director** | **Total 0** |

**c. TOTAL = 7.4a. & 7.4b. __1___**

**7.5. a. The number of reports sent to the governing board *AND* the Advisory Board mandatory for private non-profit P&A systems, at least one annually) that describe the grievances received, processed, and resolved. *[Report required, even if no grievances were filed.* [42 CFR 51.25(b)(2)] Total ___4____**

**7.6. Please *IDENTIFY ALL INDIVIDUALS*, by name & title, responsible for grievance reviews.**

Thomas Gallagher, Executive Director IPAS-PAIMI

Douglas R. Goeppner, Chairperson of the Indiana Protection & Advocacy Services Commission

## SECTION 7. GRIEVANCE PROCEDURES [42 CFR Section 51.25]

**7.7. What is the timetable (in days) used to ensure prompt notification of the grievance procedure process to clients, prospective clients or persons denied representation, and ensure prompt resolution? _3 days_ [42 CFR 51.25(b)(4)]**

**7.8. a. Were written responses sent to all grievants? YES XXX , NO ___ If no, explain below.**

**7.9. Was client confidentiality protected? YES_XXX , NO____. If no, explain below.**

**[42 CFR 51.25(b)(6)]**

## SECTION 8. OTHER SERVICES AND ACTIVITIES

**The PAIMI Rules [at 42 CFR at 51.24(b)] mandate that "Members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the P&A system. Procedures for public comment which must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and to representatives of such individuals and to other individuals with disabilities. Procedures for public comment must provide for receipt of comments in writing or in person."**

**8. A.1. Does the P&A have procedures established for public comment?**

**a. Yes XXX *PROVIDE A COPY OF A NOTICE* and briefly describe how the notice is used to reach persons with mental illness and their families.**

**b. No __, If no, briefly explain.**

The copy of these Notices are located at the end of this document, pages 58 and 59.

IPAS-PAIMI as a state agency abides by the state statute concerning the process by which the Commission (Governing Board) and Mental Illness Advisory Board (PAC) conducts their business and holds its meetings.

Comments are solicited through the year. IPAS publishes and disseminates a newsletter that contains the priorities and objectives; we provide contact information and invite comments. Additionally, we post the proposed priorities and objectives on the web site, provide contact information and invite comment.

On an annual basis, we invite the public to attend the August meeting and provide comment to the Commission regarding proposed priorities and objectives.

Lastly, IPAS submitted notices to all of the state operated mental health facilities and in-patient units of the community mental health centers, soliciting comments from individuals housed within the facility.

**8. A.2. Were the notices provided to the following persons?**

| | | |
|---|---|---|
| **a. Individuals with mental illness in residential facilities?** | **YES X** | **NO*** |
| **b. Family members and representatives of such individuals?** | **YES X** | **NO*** |
| **c. Other Individuals with disabilities?** | **YES X** | **NO*** |

**d. *Brief explanation is required for each NO answer in 8. A.2. a., b., or c.**

**8. A.3. Do the procedures provide for receipt of the comments in writing or in person? YES* XX_; NO _____.**

**8. A.3.a. If YES*, ATTACH *A COPY OF THE AGENCY'S POLICIES/PROCEDURES PERTAINING TO PUBLIC COMMENT.***

***Attached, pages 60-62***

**8. A.3.b. If NO, *EXPLAIN WHY THE AGENCY DOES NOT HAVE SUCH PROCEDURES IN PLACE*.**

## SECTION 8. OTHER SERVICES AND ACTIVITIES

| 8. B.1. Was the public provided an opportunity for public comment? | YES | NO |
|---|---|---|
| | XXX | |

**8. B. 2. If you answered YES to 8.B.1., then briefly describe the activities used to obtain public comment.**

Throughout the year, IPAS solicits comments concerning current and suggested future priorities. IPAS publishes and disseminates a newsletter that contains the priorities and objectives; we provide contact information and invite comments. Additionally, we post the proposed priorities and objectives on the web site, provide contact information and invite comment.

In accordance with Indiana state law, all meetings of the IPAS-PAIMI Governing Board and Advisory Board are open to the public. However, while not required to do so under state law, both the Governing Board and Advisory Board allow and solicit comments from the public in attendance at each meeting.

**8. B. 3. What formats and languages (as applicable) were used in materials to solicit public comments?**

IPAS posts the information electronically on its agency website and publishes the information in several agency publications. English is used in all of the agency publications; however, selected key publications have been converted to Spanish as well. Alternative formats are provided upon request to accommodate any specific needs of a requestor.

**8. B. 4. If you answered NO to 8.B.1., *BRIEFLY EXPLAIN WHY THE PUBLIC WAS NOT PROVIDED AN OPPORTUNITY TO COMMENT*.**

## 8.C. LIST GROUPS (e.g., States, consumer, advocacy, service providers, professional organizations and others, including groups of current and former mental health consumers and/ or family members of such individuals) with whom the PAIMI Program coordinated systems, activities, and mechanisms. [42 U.S.C. 10824(a(D)].

- Indiana's American Civil Liberties Union
- The Institute on Disability and Community
- KEY (Knowledge Empowers You) Consumer Organization
- Indiana Council for People with Disabilities
- NAMI of Indiana
- NAMI West Central Indiana
- Brownsburg Police Department
- Lebanon Police Department
- Community Hospital North Security
- Cumberland Police Department
- Fishers Police Department
- Clinton County Sheriff Department
- Boone County Sheriff Department
- Whitestown Police Department
- Zionsville Police Department

# SECTION 8. OTHER SERVICES AND ACTIVITIES

## 8. D. Briefly describe the outreach efforts/activities used to increase the numbers of ethnic and racial minority clients served and/or educated about the PAIMI Program. [This information will be evaluated by using the Demographic/State Profile information contained in the PAIMI Application for the same FY].

IPAS-PAIMI as part of outreach as an agency goal employs the services of a Public Relations firm for the five agency wide projects which are intended to outreach to minority and underserved individuals with disabilities, concerning disability rights issues, as well as IPAS services and successes. The Public Relations firm identifies those media outlets that target ethnic and racial minority populations.

Over the course of the year, IPAS was involved in seven events reaching 395 individuals. These conferences were targeted because of the geographic areas, population base of minority exceeded the overall state's rate.

## 8. E. Did the activities described in 8.D. result in an increase of ethnic and/or minorities in the following categories?

| | | |
|---|---|---|
| **1. Staff** | **YES** | **NO XX** |
| **2. Advisory Council** | **YES** | **NO XX** |
| **3. Governing Board** | **YES** | **NO XX** |
| **4. Clients** | **YES** | **NO..XX** |

**If the answer to any item 8.E.1 - 4 is NO, please provide a brief explanation, such as 8.E.1., 2., or 3. – no vacancies.**

**8.E.1**

Since IPAS is a state agency, the state's personnel agency handles all aspects of the soliciting and validating potential applicants. When a vacancy occurs, IPAS notifies the state's personnel agency, which in turns provides a list of potential candidates deemed as having met the position's minimum standards. Thus, IPAS is reliant upon the minority outreach efforts of the state's personnel agency concerning its personnel needs.

**8.E.2.**

For the reporting period, members of the Advisory Council are appointed and serve at the pleasure of the Governor; IPAS has no direct role in the membership selection or membership appointment.

However, at the conclusion of the fiscal year, the Advisory Council and Governing Board were implementing steps to change the appointment process. Thus, for the new fiscal year of 2011, the Governing Board would make the appointments to the Advisory Council. Currently, IPAS and its Advisory Council have continued their efforts to solicit and maintain a pool of interested and potentially qualified candidates.

**8.E.3.**

The Governor retains appointment authority of four seats on the Governing Board; neither IPAS nor the Governing Board has a direct role in appointing these positions.

The Governing Board retains the appointment authority of the remaining nine seats of the board. Currently IPAS and its Governing Board have continued their efforts to solicit and maintain a pool of interested and potentially qualified candidates.

**8.E.4**.

IPAS continues to contract with an outside Public Relations firm, Hirons, hired in part to assist the agency in developing targeted outreach to underserved populations. FFY 2010 represented the first year in which the overall percentages (23%) of the clients served from minority populations did not increase following four consecutive years of increase.

## 8. F. PAIMI PROGRAM IMPLEMENTATION PROBLEMS

### 8. F.1 External Impediments

**Describe any problems with implementation of mandated PAIMI activities, including those activities required by Parts H and I of the Children's Health Act of 2000 that pertain to requirements related to incidents involving seclusion and restraint and related deaths and serious injuries (e.g., access issues, delays in receiving records and documents, etc.).**

The Centers for Medicare & Medicaid Services' (CMS) final rules concerning a resident's death associated with either restraint or seclusion did not provide a requirement of notification of that state's P&A. Consequently, no provider voluntarily provided notification of incidents when a client either died or sustained a serious injury when the use of either seclusion or restraint was involved. Hence, the overall perception from providers is that they are under no obligation to make a direct notification to IPAS as outlined in the Parts H and I of the Children's Health Act of 2000.

Prior to the implementation of the Health Insurance Portability and Accountability Act (HIPAA), IPAS enjoyed a strong working relationship with many providers who would automatically provide notification of incidents occurring at their facility. Since HIPAA's implementation, many providers cite that the restrictions imposed by HIPAA do not allow them to volunteer the information; hence they are unwilling to enter into an agreement the IPAS to provide notification. This has placed the source of IPAS's case selection and notification on the clients, concerned family members, media reports and those few staff members willing to risk violation of HIPAA to provide to IPAS with enough information to provide IPAS with probable cause.

Prior to the 7th Circuit decision, challenges to IPAS's access to PAIMI eligible Clients, Client's records and Peer Review records has only intensified. IPAS-PAIMI's need to engage in litigation concerning access has caused an unexpected need to conserve funds for expenditures related to the continuing legal battles.

# SECTION 8. OTHER SERVICES AND ACTIVITIES

### 8. F.2. *Internal Impediments*

**Describe any problems with implementation of mandated PAIMI activities, including any identified annual priorities and objectives (e.g., lack of sufficient resources, necessary expertise, etc).**

Staffing changes throughout the year have hampered the implementation of the program to its fullest capacity. Historically IPAS has had a stable workforce, as staff typically averaged nearly 12 years of service. However, during the past fiscal year, numerous staff vacancies have occurred, some due to retirements while others due to injuries, illnesses and other job opportunities. These vacancies have all occurred within the key areas of attorneys and advocates, both classifications providing direct client services. Thus at times throughout the fiscal year, half of the attorney and 80% of the advocates assigned to state facilities have been vacant at one time during the year. This in turn has caused the need to divert time and efforts to the hiring and training processes.

## 8. G. ACCOMPLISHMENTS

**For this fiscal year, briefly describe the most important accomplishment(s) that resulted from PAIMI Program activities. PROVIDE copies of supporting documents, e.g., case law, news article, legislation, etc.**

Copies of supporting documents are attached, pages 63 to 78.

**Larue Carter Records Access Lawsuit**

IPAS received a major victory from the *en banc* Seventh Circuit court. On April 22, the court held that the PAIMI Act provides a right of action to a protection and advocacy agency to bring a lawsuit in federal court to enforce the access provisions of the PAIMI Act. The court also held that the 11th Amendment is not a bar to the lawsuit. The IPAS lawsuit, the court held, was a straight-forward application of *Ex parte Young* because IPAS sued state officials, alleged an ongoing violation of federal law, and sought prospective relief only. Finally, the court summarily held that the Seventh Circuit was now joining the four other circuits that have held that peer review records are required to be disclosed to a protection and advocacy agency under the PAIMI Act.

After losing in the Seventh Circuit, the state requested a stay from the Seventh Circuit. When the stay was denied there, the state moved for a stay from the United States Supreme Court. Justice Stevens denied the stay. The State of Indiana filed a petition for certiorari in IPAS v. DMHA on July 21. As expected, the state raised not only the 11th Amendment issue, but also the private right of action and the peer review record issue in its petition.

**Department of Correction Lawsuit**:

Judge Young of the District Court certified the class of prisoners for the litigation as those with serious mental illness who are housed in isolated settings within the Indiana Department of Correction (IDOC). A notice to the class has been posted conspicuously or delivered to the entire population of prisoners in the IDOC, and we are receiving correspondence from additional prisoners as a result of the notice.

# SECTION 8. OTHER SERVICES AND ACTIVITIES

## 8. H. RECOMMENDATIONS

**Please provide recommendations for activities and services to improve the PAIMI Program. Include a brief description of why such activities and services are needed. [42 U.S.C. 10824(a)(4)]].**

## 8. I. PLEASE IDENTITY ANY TRAINING & TECHNICAL ASSISTANCE REQUESTS. [42 U.S.C. 10825]

# SECTION 9. ACTUAL PAIMI BUDGET/EXPENDITURES FOR FY 2010

***In this section, provide actual expenditures for the FY. Refer to the PAIMI Application [Appendix C] submitted to SAMHSA/CMHS for the same FY.***

## 9. A. PAIMI PROGRAM PERSONNEL – INSERT ADDITIONAL ROWS AS NEEDED. ++

***List vacancies by position, annual salary, percentage of time & costs that will be charged to the PAIMI Program grant when the position is filled.***

| Position Title | Annual Salary | Percent/Portion Of Time Charged To PAIMI | Costs Billed to PAIMI |
|---|---|---|---|
| Executive Director | **67,967** | 0.28 | $ 19,031 |
| Support Services Director | **55,683** | 0.28 | $ 15,591 |
| Education and Training Director | **40,561** | 0.25 | $ 10,140 |
| Program Specialist | **49,113** | 0.28 | $ 13,752 |
| Accountant | **39,133** | 0.28 | $ 10,957 |
| Accountant | **30,537** | 0.28 | $ 8,550 |
| Data Entry Clerk | **29,446** | 0.28 | $ 8,245 |
| Executive Secretary | **28,282** | 0.28 | $ 7,919 |
| Receptionist | **20,459** | 0.28 | $ 5,729 |
| Assistant Director Client Services | **46,332** | 0.54 | $ 25,019 |
| Advocate | **47,106** | 0.26 | $ 12,248 |
| Advocate | **33,159** | 0.1 | $ 3,316 |
| Advocate | **33,072** | 0.37 | $ 12,237 |
| Advocate | **39,255** | 0.45 | $ 17,665 |
| Advocate | **32,974** | 0.45 | $ 14,838 |
| Assistant Director Client Services | **44,058** | 0.25 | $ 11,015 |
| Advocate (vacant part of year) **++V** | **30,657** | 0.2 | $ 6,131 |
| Advocate (vacant part of year) **++V** | **46,177** | 0.32 | $ 14,777 |
| Advocate | **31,888** | 0.37 | $ 11,799 |
| Advocate | **34,359** | 0.2 | $ 6,872 |
| Advocate (vacant part of year) **++V** | **47,994** | 0.1 | $ 4,799 |
| Advocate (vacant part of year) **++** | **29,614** | 0.15 | $ 4,442 |
| Assistant Director Client Services | **50,113** | 0.04 | $ 2,005 |
| Advocate | **33,428** | 0.26 | $ 8,691 |
| Advocate | **41,656** | 0.08 | $ 3,332 |
| Legal Services Director | **60,000** | 0.46 | $ 27,600 |
| Attorney (vacant part of year) **++V** | **53,800** | 0.12 | $ 6,456 |
| Attorney | **50,758** | 0.26 | $ 13,197 |
| Attorney (vacant part of year) **++** | **54,607** | 0.25 | $ 13,652 |
| **SUBTOTAL** | | | **$ 320,004** |
| **++Vacant positions**<br>Some vacant during part of year see above, the 4 vacant on September 30, 2010 identified with "V" | **4** | | |
| **Volunteer positions** | **0** | | |
| **TOTAL POSITIONS** | **29** | | |

| 9. B. CATEGORIES | COST |
|---|---|
| **Fringe Benefits (PAIMI only)** | **$118,401** |
| **Travel Expenses (PAIMI only)** | **$9,096** |
| **SUBTOTAL** | **$127,497** |

| 9. C. EQUIPMENT - TYPE (PAIMI ONLY) | COST |
|---|---|
| Office equipment | $94 |
| Defibrillator | $323 |
| Computer Software | $113 |
| Computers/accessories | $1,738 |
| Other equipment | $20 |
| | |
| **SUBTOTAL** | $2,288 |

## SECTION 9. ACTUAL PAIMI BUDGET/EXPENDITURES FOR FY 200_

| 9. D. SUPPLIES - TYPE (PAIMI ONLY) | COST |
|---|---|
| Gasoline, office supplies, paper, copier supplies, toner, printed forms, food, refreshments, media storage, materials/parts, storage boxes and other misc. supplies | $22,716 |
| | |
| | |
| | |
| **SUBTOTAL** | $22,716 |

**9. E. CONTRACTUAL COSTS (including Consultants) for PAIMI Program Only**

| Position Or Entity | Service Provided | Salary/Fee | Fringe Benefit Cost | Travel Expenses | Other Costs |
|---|---|---|---|---|---|
| Hirons Contract | Public Information Services | | | | $18,500 PAIMI Portion of contract services |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| **SUBTOTAL** | | | | | $18,500 |

**9. F. TRAINING COSTS FOR PAIMI PROGRAM ONLY**

| Categories | #Of Persons/ Travel Costs | #Of Persons/ Training Costs | # Of Persons/ Other Expenses |
|---|---|---|---|
| **Staff** | 24/$463 | 24/$630 | 24/$2,650 (salary) |
| **Governing Board** | 1/$44 | 1/$68 | 1/$100 (lodging/per diem) |
| **PAC Members** | 2/$1,271 | 2/$552 | 2/$1,801 (lodging/per diem/parking) |
| **Volunteers** | 0 | 0 | 0 |
| **Subtotal** | $1,778 | $1,250 | $4,551 |
| | | Total all training | $7,579 |

| 9. G. OTHER EXPENSES (PAIMI PROGRAM ONLY) | COST |
|---|---|
| Litigation/Court Costs | $3,000 |
| Utilities , phone, data, cell phones, state seat charges, internet, email storage, long distance, misc. utilities | $10,665 |
| Insurance, professional services, agreements/leases, IT services, misc service fees | $23,750 |
| Administrative/operating expenses, office lease, dues/subscriptions Postage/freight, state service charges, retiree medical benefits, printing services, motor pool services and misc. operating expenses | $56,437 |
| | |
| **SUBTOTAL** | $93,852 |

| SECTION 9. ACTUAL PAIMI BUDGET/EXPENDITURES FOR FY 200_ | | |
|---|---|---|
| **9. H. Indirect Costs (PAIMI only):** | | **COST** |
| **1. Does your P&A have an approved Federal indirect cost rate? Indiana does have a SWCAP with HHS.** | **YES XX** | **NO** |
| **a. If YES, what is the approved rate? Determined by use of PAIMI funds in relation to other federal grants.** | **.02** | |
| **2. Total of all PAIMI Program costs listed in 9.A. - 9.G.** | | **$592,436** |
| **3. Income Sources and Other Resources (PAIMI grant award)** | | **$613,654** |
| **4. PAIMI Program carryover of grant funds (FFY 2009 grant)** | | **$64,113** |
| | | |
| | | |
| **5. Interest on Lawyers Trust Accounts (IOLTA).** | | **$0** |
| **6. Program income (PAIMI only).** | | **$0** |
| **7. State** | | **$0** |
| **8. County** | | **$0** |
| **9. Private** | | **$0** |
| **10. Other funding sources. [IDENTIFY each source].** | | **$0** |
| **11. Total of all PAIMI Program resources.** | | **$677,767** |
| **SUBTOTAL** | | **$677,767** |

# GLOSSARY

**Closed case -** is when the advocate/attorney closes the client record or case file after providing advocacy interventions on behalf of a client, and determining that the client either has no need of further intervention services or that the agency has no other services available to address the issue(s) or complaint(s) for which the case was initially opened.

**Grievance Procedures –** are policies and procedures developed by the P&A system to ensure that its clients and prospective PAIMI-eligible clients, their family members, or representatives have full access to the system services and that the system is fully compliant with the provisions of the PAIMI Act and Rules.

**Information and Referral (I&R) Services -** is the provision of brief written or oral information, such as generic information about the P&A, including information about additional programs and resources external to the P&A that relate to the individual's service needs and statutory or constitutional rights as a person with a disability. I &R services are generally of short duration, typically range from a few minutes to an hour, do not involve direct advocacy intervention by staff, and any type of staff follow-up. I&R services may include mailing generic agency information. Individuals receiving I &R services are not counted as PAIMI clients.

**Intervention Strategies:**

- **Abuse/Neglect Investigations** - a systemic and thorough examination of information, records, evidence and circumstances surrounding an allegation of abuse and neglect. Investigations are undertaken to determine if there is a basis for administrative or legal action on behalf of the client. Investigations require a significant allocation of time to interview witnesses, gather factual information, and to issue a written report of findings.

- **Administrative Remedies -** includes the use of any systems for appeal within an agency or facility, or between agencies, which does not involve adjudication by a court of law.

- **Legal Remedies -** the legal representation of clients in litigation in court processes concerned with rights, grievances, or appeals of such rights or grievances.

- **Legislative/Regulatory Advocacy** activities involve monitoring, evaluating, and commenting upon the development and implementation of Federal, State, and local laws, regulations, plans, budgets, taxes and other actions which may affect individuals with mental illness. [The PAIMI Rules at 42 FCR at 51.24 mandates that legislative activities shall also be addressed in the development of program priorities].
- **Negotiation/Mediation -** is a informal, non-legal intervention by a PAIMI representative, attorney or case manager used to resolve problems with facility staff or other agency representatives; (does not involve a formal appeal).

- **Short Term Assistance -** Time limited advice and counseling assistance, which may include reviewing information, counseling a client on actions one may take, and assisting the client in preparing letters, documents or making telephone calls to resolve the issue.

- **Technical Assistance -** includes the provision of information, referral or advice to clients by a PAIMI Program representative, attorney, or advocate, (e.g., coaching the client in self-advocacy, explaining service delivery system(s) available to meet needs, dissemination of information and materials to client, etc.). Follow-up is required.

**Objectives -** are activities undertaken to achieve annual program priorities (goals). All objectives required to have measurable outcomes and the use of numerical targets is encouraged. Each objective must clearly state why the activity was undertaken, who will benefit from the objective (the target population), how the activity will be accomplished, and what is the expected outcome for the activity? Generally, with the exception of litigation, legislative or regulatory activities, objectives shall be attainable within the fiscal reporting period (within one (1) fiscal year).

**Open Case -** is when a PAIMI-eligible individual with a complaint is accepted as a client by the P&A system. A case record or case file is opened for that individual. System staff maintain all intervention services provided to the client and other information t are maintained in this case record/file.

**Outreach -** is an activity that targets information on PAIMI Program activities to specific populations (e.g., cultural, ethnic and racial minorities, and other underserved or un-served populations, etc. The activity is linked to an objective of a specific annual priority.

**PAIMI Clients (for purposes of this report) -** are individuals who meet the PAIMI eligibility criteria as defined in the PAIMI Act [42 U.S.C. 10802(4) and its Rules at 42 CFR 51.2 Definitions, who have a complaint, for whom demographic data is collected, and for whom the PAIMI Program, or any of its subcontractors, provides an intervention (as reported under Intervention Strategies in this form).

**Priorities (Goals) –** are broad general descriptions of short term activities for the P&A system to accomplish within one (1) fiscal year (FY). [The exceptions are generally regulatory, legislative, and litigation activities]. The priorities must be directly related to the purpose of the enabling Federal legislation and the requirements of the Federal-funding agency and consistent with the priorities included in the PAIMI Application for the same FY. [See PAIMI Act at 42 U.S.C. 10801, PAIMI Rules at 42 CFR 51.24 (a) – Program Priorities, and the Children's Health Act of 2000 at 42 U.S.C. at 290ii-ii-1 and 290jj-jj-2].

**Public Awareness Activities -** provide general information on disability rights and the purpose and mission of the P&A system. Public awareness activities include public service announcements, newsletters, radio or television, publications in legal journals, web site services, general distribution of agency brochures, etc.

**Public Education and Constituency Training -** is the dissemination of information to one or more persons through an interactive event, which often promotes a greater understanding of the constitutional or statutory rights of persons with disabilities. Contrasted to Public Awareness Activities, education and training must be specifically targeted to meet the unique need of the group(s) trained.

**Racial/Ethnic Background -** for the purposes of this report, the ethnicity categories are Hispanic or Latino and Not Hispanic or Latino. The race categories are American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

**Resolution of Complaint/Problem Area –** is in a client's favor when **(** 1) the client is satisfied with the result of the intervention or (2) the expressed wish or stated goal of the client is either fully attained or negotiated to an agreeable outcome, or (3) the violation in the stated case complaint/problem area was remedied.

**Systemic Advocacy Activities –** are the efforts taken to implement changes in policies and practices of systems that impact persons with mental illness. These "systems" include, but are not limited to, State agencies, various public and private residential care and treatment facilities, and other service providers, etc. [The PAIMI Rules at 42 CFR 51.24 (a) PAIMI Priorities state that systemic activities shall be addressed in the development and implementation of program priorities].

## INDIANA PROTECTION AND ADVOCACY SERVICES COMMISSION

The Indiana Protection and Advocacy Services (IPAS) Commission, whose mission is to protect and promote the rights of individuals with disabilities through empowerment and advocacy, will receive comments from interested persons concerning proposed priorities and objectives for 2009 - 2010, during a public meeting Saturday, August 14, 2010, from 10:00 a.m. -11:00 a.m., at the IPAS offices, 4701 N. Keystone Ave. Suite 222, Indianapolis, IN 46205. The proposed priorities may be viewed on the IPAS website at www.in.gov/ipas or may be obtained by contacting IPAS. Persons wishing to attend who require disability accommodations are requested to notify Gary Richter, Support Services Director, of such needs by August 2, 2010, 1-800-622-4845.

*Posted: 06/09/2010 by Legislative Services Agency*

DIN: 20100609-IR-IPA100351ONA
Composed: Dec 22,2010 7:35:38AM EST

.

# "WE WANT YOUR OPINION!"
# A request for your comments concerning the annual priorities of the Protection & Advocacy for Individuals with Mental Illness (PAIMI) program.

Indiana Protection and Advocacy Services (IPAS) is once again considering what disability rights issues that will be addressed from October 1, 2010- September 30, 2011. Since IPAS has limited resources so each year, we must adopt Annual Priorities. These Priorities determine how IPAS resources and manpower are used, and are developed with input from our Advisory Council, our Commission, our staff, and most importantly, the community at large.

We would welcome your thoughts, suggestions and comments about the problems on which we should work, to best serve individuals with mental illness.

How can you make your voice heard?
Contact IPAS by mail, telephone or E-mail at
Indiana Protection and Advocacy Services
4701 N. Keystone Ave., Suite 222
Indianapolis, IN 46205

Voice 1-800-622-4845 or TTY 1-800-838-1131 (ext 229, David Boes)
e-mail dboes@ipas.IN.gov
*Visit our Web site at* www.in.gov/ipas
*Click on Priorities in the menu to the left side of the home page to see current and proposed priorities.*

***Please Post*** ***Remove April 23, 2010***

IPAS POLICY AND PROCEDURE MANUAL CHAPTER 5: SEC 5

OFFICE MANAGEMENT

GENERAL PROCEDURES: OBTAINING PUBLIC INPUT FOR PRIORITIES AND OBJECTIVES

**Policy:** On an annual basis IPAS will provide members of the public with the opportunity to comment on the priorities established by, and the activities of the P&A system.

**Procedure:** The following procedures are established to provide the public with the opportunity comment on the proposed priorities and IPAS' activities.
Forty five (45) days prior to the August meeting the IPAS Commission, notices will be posted inviting the public to comment on the draft priorities for the upcoming year.

1.) IPAS staff will publish the notice regarding the public meeting held to provide the opportunity to comment on the proposed priorities in the Indiana Register, and submit a notice to the state operated mental health facilities i.e., residential facilities.
2.) IPAS will disseminate a copy of the proposed priorities, concurrently with the public notice for comment to:
    - Statewide organizations representing individuals that are or have received disability services or family members of such individuals, and
    - The State Developmental Disabilities Council and the University Affiliated Program.
3.) IPAS will disseminate a copy of the proposed priorities upon request as well as post the proposed priorities on the IPAS website.

IPAS will accept comments at any time during the course of the year.

- Individuals interested in submitting comments may do so in person, in writing, by telephone or email.
- Comments received by IPAS staff will be forwarded to the IPAS Commission and the Mental Illness Advisory Council.
- During the August Commission meeting the IPAS Commission will set aside specific time for the opportunity for public comment regarding the proposed priorities.

**REFERENCES:**

**PAIMI regulations**

**42 CFR §51.24(b).** Members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the P&A system. Procedures for public comment must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and representatives of such individuals and to other individuals with disabilities. Procedures for public comment must provide for receipt of comments in writing or in person.

**PADD Regulations**

**45 CFR §1386.23(c)(3**). Priorities as established through the SOP serve as the basis for P&As to determine which cases are selected in a given fiscal year. P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP but they must inform individuals that this is the basis for turning them down.

**45 CFR §1386.23(d).** Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Objectives and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Incorporate or address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program will collaborate with each other and with other public and private entities.

(The requirements under paragraph (b) are approved under control number 0348-0039 by the Office of Management and Budget (OMB). Information collection requirements contained in paragraph (c) are approved under OMB control number 0970-0132 pursuant to Sections 142(a)(2) (C) and (D) and Section 107(b) of the Act.)

**DD ACT**

**42 U.S.C. 15043(a)(2)(D).** On an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on-

(i) the goals and priorities established by the system and the rationale for the establishment of such goals; and

(ii) the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C.

10801 et seq.), and with entities carrying out other related programs, including the parent training and information centers funded under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and activities authorized under section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012);

The United States Law Week®

Source: U.S. Law Week: News Archive > 2010 > 05/04/2010 > Summary & Analysis > Health Care—Mental Health: PAIMI Act Itself, Young Doctrine Allow Suing State Officials for Medical Records

78 U.S.L.W. 1680

***Health Care—Mental Health***

## PAIMI Act Itself, Young Doctrine Allow Suing State Officials for Medical Records

The 11th Amendment does not bar a suit by an independent state agency, the Indiana Protection and Advocacy Services, under the 1986 Protection and Advocacy for Individuals with Mental Illness Act against Indiana officials seeking injunctive and declaratory relief affording access to mental health records held by a different state agency, the en banc U.S. Court of Appeals for the Seventh Circuit held April 22 (*Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration*, 7th Cir. (en banc), No. 08-3183, 4/22/10).

Judge David F. Hamilton made clear that the PAIMI Act itself provides a cause of action for injunctive and declaratory relief to enforce the statute, and that the Ex parte Young doctrine allows the suit against the state officials. The ruling was in accord with the United States' position as amicus curiae, but it created a circuit split.

Indiana Solicitor General Thomas M. Fisher, who was lead counsel for the state in the case, told BNA April 28 that the case is important because the holding is not limited to the state agencies involved. He said that the rationale for the court's 11th Amendment analysis might extend to other state agencies and open the door to state agencies suing each other in federal court.

Seth Galanter, Morrison & Foerster LLP, Washington, D.C., who represented independent state agency IPAS, told BNA on the 28th that the case is important "because it confirms that the requirements of the PAIMI Act are not optional." He explained that under the statute states "must allow a protection and advocacy system to access records. The court reaffirms that protection and advocacy systems, such as IPAS, have a federal remedy when the state refuses to comply. It is impossible for IPAS and other protection and advocacy systems to perform their federally mandated role to detect and prevent abuse of persons with mental illness and disabilities in the absence of a clear and prompt remedy."

### Protection and Advocacy Systems Created

Congress enacted the PAIMI Act to ensure the rights of individuals with mental illness and to help states operate protection and advocacy programs for them. The statute provides funding to states that designate a "protection and advocacy system." A state may either create a state agency or appoint a private entity to fulfill this obligation. Indiana chose to create an independent agency, IPAS.

The PAIMI Act gives agencies like IPAS authority to investigate abuse and neglect of individuals with mental illness and to pursue administrative, legal, and other remedies on behalf of those individuals. To meet this goal, the statute gives IPAS the right to access specified patient records.

Having designated IPAS as the state's protection and advocacy system, Indiana is prohibited from redesignating a different agency or entity without good cause.

During an investigation into the treatment of two mental health patients at Larue Carter Memorial Hospital, IPAS was not given all of the reports and records it requested. As a result, IPAS sued the state, the Indiana Family and Social Services Administration, and three named officials in their official capacities. IPAS requested a declaration that the defendants violated its right to access the requested records and a permanent injunction against restricting IPAS's reasonable access to "records" as defined by the PAIMI Act. The district court granted IPAS's motion for summary judgment.

On appeal, a Seventh Circuit panel held that the PAIMI Act did not give IPAS an express right of action, IPAS could not sue under 42 U.S.C. §1983 because IPAS is a state agency and thus not a "person" for purposes of that section, and that the Ex parte Young doctrine did not afford a way

around the 11th Amendment bar to the suit. The en banc court disagreed.

**11th Amendment**

If properly raised, the 11th Amendment bars actions in federal court against a state, state agencies, or state officials acting in their official capacities, the court said. But *Ex parte Young*, 209 U.S. 123 (1908), creates an exception to 11th Amendment immunity where the plaintiff seeks prospective equitable relief for ongoing violations of federal law.

Applying the doctrine requires a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks prospective relief, the court said. "That inquiry is satisfied here," it said. "IPAS named individual state officials as defendants in its lawsuit. It alleges that those officials have obstructed its access to records under the PAIMI Act, an ongoing violation of federal law. The relief IPAS seeks—reasonable access to the records—is also prospective."

IPAS conceded that it could not sue either Indiana or any of its agencies under the 11th Amendment, but the claims against the named officials survive under the Ex parte Young doctrine, the court said.

The defendants argued that because IPAS is technically a state agency under *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 635 (1997), it could not bring the claims against them. They also argued that the suit is merely an intramural suit between two agencies.

"The threshold problem with these arguments is that the *Ex parte Young* doctrine focuses on the identity of the defendant and the nature of the relief sought, not on the nature or identity of the plaintiff," the court said. In any event, it said that "*Coeur d'Alene Tribe* does not support defendants here." It explained that the U.S. Supreme Court later turned away from the balancing of the plaintiff's and state's interests used in *Coeur d'Alene Tribe*, and went back to the straightforward analysis in *Verizon Maryland Inc. v. Md. Pub. Serv. Comm'n*, 535 U.S. 635 (2002).

Rejecting the defendants' second contention, the court said that the case is not an intramural dispute between two state agencies. IPAS is unique because of its treatment under the PAIMI Act, it said: IPAS directly receives federal funds and has authority independent of state law to protect individuals with mental illness.

The court held that the 11th Amendment "does not bar IPAS's request for declaratory and injunctive relief against the named state officials." It noted, however, that in *Virginia Office of Protection and Advocacy v. Reinhard*, 568 F.3d 110 (4th Cir. 2009), *petition for cert. filed*, 78 U.S.L.W. 3272 (U.S. Jan. 19, 2010) (No. 09-529), the Fourth Circuit reached the opposite conclusion.

**PAIMI Act Right of Action**

The court also rejected the argument that the PAIMI Act does not itself provide IPAS with a cause of action to seek equitable relief. The defendants argued that protection and advocacy systems can sue only under Section 1983, but under *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), they are not a "person" that can sue under Section 1983. "If that's true, then IPAS and other state-agency protection and advocacy systems cannot obtain relief in federal court by any avenue," the court said.

The "PAIMI Act itself authorizes IPAS to bring this suit for injunctive relief," the court held. The statute shows congressional intent "to create a legally enforceable right of access to patient records vested in an identifiable class—protection and advocacy systems, including IPAS, which act for the benefit and protection of mentally ill individuals who may have difficulty acting for themselves. If and when those protection and advocacy systems are denied their right of access, the PAIMI Act shows with sufficient clarity that the remedy is a suit to enforce the right of access in federal or state court."

The court noted that 42 U.S.C. § 10805(a) says that protection and advocacy systems "shall" have access to the records of mentally ill patients. It also says that the system "shall" have the authority to bring legal action to ensure the protection of its constituents.

"[T]hese powers are conferred upon a protection and advocacy system like IPAS as a matter of federal law by virtue of its designation by a state. ... [N]othing in the PAIMI Act requires the state to adopt legislation or regulations granting such powers as a matter of state law," the court said.

The court also noted that 42 U.S.C. §10807(a) says that "prior to instituting any legal action in a Federal or State court" on behalf of a constituent, an eligible system "shall exhaust ... all administrative remedies." If the system decides that an issue will not be resolved in a timely manner, it "may pursue alternative remedies, including the initiation of a legal action." This provision "would

have little purpose if protection and advocacy systems like IPAS were not empowered to sue to enforce the PAIMI Act," the court said.

The court also held that the peer review records sought by IPAS in this case are "records" to which IPAS is entitled under the PAIMI Act.

**Practical Considerations Favor IPAS**

Although he joined "Judge Hamilton's opinion without reservation," Judge Richard A. Posner wrote a separate concurrence to emphasize some practical considerations that favored IPAS's right to sue to obtain patient records. Among other things, he stressed that if hospitals can thumb their noses at the agencies' request for records and the only remedy is the withholding of federal funds, the mentally ill in those states would be worse off, which is not what Congress intended.

Dissenting, Chief Judge Frank H. Easterbrook said, among other things, that the statutes in question do not confer rights on IPAS, that nothing in the PAIMI Act "alerts Indiana that, by taking the money, it agrees to be sued in federal court by its own agency," and that, because nothing in the statute creates a personal remedy of any kind, the Ex parte Young doctrine was inapplicable. The threat of cutting off federal funds to recalcitrant states is a sufficient remedy to enforce the statute, and fights between state agencies should be resolved within the state, he said.

Judge John D. Tinder did not participate.

**Public Agency v. Private Entity**

Even though the PAIMI Act allows a state to use either a public agency or a private entity as its protection and advocacy system, Galanter said that the court's analysis applies to whichever vehicle is chosen. He noted that in eight states, including Indiana, public entities are being used, while the other states have designated private entities. This ruling "affirms that all these entities can bring suit under the PAIMI Act and that a State's choice of public or private entity will not affect the federal rights and remedies available to ensure the protection of people with disabilities and mental illness."

Fisher explained, however, that if Indiana had designated a private entity, instead of IPAS, as its protection and advocacy system, the court's analysis would have been somewhat different, because the Ex parte Young issue would not have been on the table.

Fisher also said that a court's analysis under the PAIMI Act should not differ depending on how each state's law is written. While the statute is "odd," and has no straightforward cause of action for the state, its application is a matter of federal law, he said.

Galanter agreed that "the authority of the protection and advocacy system is governed by federal law, not state law." He explained that once a state designates an entity as its protection and advocacy system, "that system is imbued, as a matter of federal law, with certain rights and remedies." He said that while states are "free to provide additional authority (as many do), the failure of a State to enact a law incorporating the rights and remedies required by federal law does not detract from the power of a protection and advocacy system."

**State Keeping Options Open**

Galanter said that "[a]fter wrongfully withholding the documents for years, we expect Indiana to comply with the district court's order, now affirmed by the court or appeals, so that IPAS can move forward in investigating the death and injuries at the state hospital."

Fisher said, however, that the state has not yet made a final decision whether to seek review of the decision before the Supreme Court. He explained that he is keeping an eye on *Reinhard*, and that the U.S. solicitor general has been asked by the Supreme Court to file a brief in that case expressing the views of the United States (see 78 U.S.L.W. 3416). He added that Indiana will do what it has to do to protect its position. The sovereign immunity issue is "irresistible" and, one way or another, it will go before the Supreme Court, he said.

Seth M. Galanter, Morrison & Foerster, Washington, D.C., argued for IPAS. Thomas M. Fisher, Indiana Solicitor General, argued for the state. Alisa B. Klein, Department of Justice, argued for the United States as amicus curiae supporting IPAS.

*By Bernard J. Pazanowski*

*Full text at http://pub.bna.com/lw/083183.pdf.*

Contact us at http://www.bna.com/contact/index.html or call 1-800-372-1033

ISSN 1522-4317

Copyright © 2010, The Bureau of National Affairs, Inc.. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy. http://www.bna.com/corp/index.html#V

INDIANA LAWYER daily

DAILY: E-MAIL SIGN-UP | IL DAILY ARCHIVE | NEWS TIPS | CONTACT INDIANA LAWYER | ADVERTISING INFO IL: HOME | PRINT SUBSCRIPTION

Thursday, April 22, 2010

# Full appeals court decides on IPAS case

Michael W. Hoskins - mhoskins@ibj.com

*IL Staff*

Your Time
Your Client's Money
Think About It
Use CourtCall

*Serving Courts Nationwide*

CourtCall
Telephonic Court Appearances

1-888-882-6878 • www.courtcall.com

Nine months ago, a federal judge in Indianapolis refused to dismiss a case about the state's practices and programs regarding mentally ill inmates, finding an independent state agency had a right to sue on those issues.

But within a week, a three-judge federal appellate panel ruled the opposite way against that the same plaintiff in a different suit, essentially sweeping that first ruling by U.S. Judge David F. Hamilton under a legal rug and forcing him to reconsider the dismissal.

The case that Judge Hamilton handled remains ongoing and is set for bench trial early next year, but not before Judge Hamilton because he's since been elevated to the 7th Circuit Court of Appeals. Now as an appellate jurist and writing for the full court en banc, Judge Hamilton today found a chance to weigh in on identical issues he'd faced a year ago at the lower court level.

Writing for eight other majority members who disagreed with the one dissenter, Judge Hamilton authored a 63-page opinion that essentially came to the same conclusion that he'd reached on the other case - finding the agency has a right to sue and not dismissing the Indiana Protection and Advocacy Services suit.

In rehearing en banc the case of *Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration, et al.* No. 08-3183, the appellate court articulately delved into legislative history and intent as well as caselaw to come up with a decision that touches on broader issues about states rights and federalist principles about when court jurisdiction is appropriate.

The court affirmed a decision from U.S. Judge Larry McKinney, removing the state of Indiana and Family and Social Services Administration as defendants but keeping alive the claims against the named state officials. Specifically, the court held the 11th Amendment does not bar plaintiff IPAS from seeking injunctive and declaratory relief against the state officials because the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986 provides that cause of action, and that plaintiff is entitled to access peer review records of treatment of covered mentally ill patients.

Basically, the court held the opposite of what the three-judge panel found last summer: the agency doesn't have standing to bring suits in federal court because of the 11th amendment and state statutes haven't given IPAS the powers listed in 42 U.S.C Sections 10805 and 10806.

Filed in late 2006, IPAS sued FSSA, LaRue Carter Memorial Hospital, and several state officials in order to gain records on a mentally disabled adult patient who died while at LaRue Carter to find out if she was a victim of abuse. Judge Larry McKinney had decided the defendants had to hand over the records because the victim was an adult and her parents weren't appointed her legal guardians, but the FSSA argued releasing the records would violate the victim's parents' privacy.

Relying the three principal types of exceptions to the 11th Amendment's bar, the majority found that the Supreme Court of the United States has held immunity goes away once a state official acts outside the scope of his or her authority.

"Congress gave each state the choice to establish a protection and advocacy system as either an independent state agency or a private not-for-profit entity," Judge Hamilton wrote. "Indiana made the choice to set up IPAS as an independent state agency. If we gave that choice any weight in the 11th Amendment inquiry, we would be permitting Indiana to use its own choice ... as a means to shield its state hospitals and institutions from the very investigative and oversight powers that Congress funded to protect some of the state's most vulnerable citizens. That result would be strange indeed."

Judge Richard Posner issued a concurring opinion, noting that he joins the majority "without reservation" but wrote separately to emphasize what he sees as practical considerations on the right to sue to obtain patient records for the mentally ill.

"Independent as it is of the governor and the attorney general, IPAS is a state entity in name only, especially in a suit against a state hospital - there it's an agent of the federal government, suing to assure a state's compliance with the federal duties of care for the mentally ill that the state agreed to perform," Judge Posner wrote. "It would be strange if a state could render the federal statute unenforceable by creating (or appointing) a public rather than a private protection and advocacy agent, or if the statute were unenforceable against state hospitals even though there is (as I think we all agree) no issue of state sovereign immunity."


Chief Judge Frank Easterbrook was the sole dissenter, saying that he would have dismissed the suit and let the administrative process take its course.

"Both (plaintiffs and defendants) believe that they have the patients' interests at heart, though they disagree about how to serve those interests," he wrote. "Fights between two state agencies should be resolved within the state (including the state's judiciary, if state law so provides, or through the auspices of the Department of Health and Human Services which administers the federal grant program. This statute establishes a program of cooperative federalism. Cooperation usually requires negotiation and compromise among multiple public bodies. That is the way of the administrative rather than the judicial process."

The chief judge pointed out the majority's rationale seems to fundamentally conflict with SCOTUS precedent. He wrote, "Perhaps my colleagues have a wise view as a matter of policy, but the Supreme Court's perspective is the one we must use in a hierarchical judicial system."


If this ruling stands and isn't appealed to the nation's highest court, it would likely impact the case of *IPAS v. Indiana Department of Correction*, 1:08-CV-11317, which Judge Hamilton had decided on July 21, 2009, and is now before Chief Judge Richard L.

**Pedevilla, Karen**

**From:** VanDeGrift, Bonita Sue
**Sent:** Monday, June 07, 2010 8:37 AM
**To:** #All IPAS Personnel
**Subject:** DOC

Published: June 6, 2010 3:00 a.m.

# Prisons prepared to care for mentally ill

Jeff Wiehe | The Journal Gazette
FORT WAYNE – A recent study found that a mentally ill person is three times more likely to end up behind bars than in a hospital, a situation that has many county jails unprepared to handle the number of inmates that need care or medication.
But prison is another story, according to an official with the private company that handles mental health care for the Indiana Department of Correction.
Each facility offers various levels of mental health care, which dictates where an inmate might go upon entering prison, according to Jamie Wiles, a psychologist and regional mental health director for Correctional Medical Services.
"We do offer a kind of whole continuum of mental health care," she said.
Every inmate is given a mental health screening upon entering the system and then receives another health screening every year after that.
There is access to psychiatrists, psychologists and mental health workers, according to Wiles.
Many men who enter prison with severe mental health needs will find themselves at the correctional facility in New Castle, where a unit for those suffering from acute symptoms was opened in 2008.
The unit has about 90 beds with a constantly fluctuating population. Most beds are full, though some are left empty in case space is needed.
A similar unit for women is found at the Indiana Women's Prison in Indianapolis.
"The goal is to treat them and build enough skills to move them into a general population," Wiles said of the inmates who come to those units.
Plus, when inmates suffering from mental illness leave the Department of Correction, they're typically given 30 days' worth of whatever medication might be prescribed to them as well as a prescription for a refill, according to Wiles.
"I think a lot of people don't know what's available at the Department of Correction," she said.
The mental health care in the department, though, came under some fire recently through a lawsuit filed in 2008 by the American Civil Liberties Union on behalf of the Indiana Protection and Advocacy Services Commission.
That lawsuit, filed against Commissioner Edwin Buss, claims that some inmates at the New Castle unit were not provided proper care, were kept in isolation for long periods of time and were only allowed a few showers a week.
Buss has denied those claims through court paperwork. The case is still pending.
jeffwiehe@jg.net

*Bonita S. Van De Grift*

**Subject:** National Law Journal article

"Full 7th Circuit lets state-run group sue state in federal court," National Law Journal, 4/23/2010, **Seth Galanter** is quoted, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202451305143, subscription required

The U.S. Court of Appeals for the 7th Circuit, sitting en banc, has ruled that one state agency can sue another to gain access to state medical records under a federal statute meant to protect the mentally ill.

In this case, a state-run advocacy group in Indiana had sued state officials for not turning over the records involving two patients at state hospitals: a woman who died 30 days after entering the hospital and a man who alleged he had been assaulted.

On April 22, the 7th Circuit held that the agency, Indiana Protection and Advocacy Services (IPAS), was entitled to access the records under 1986 Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and to seek injunctive and declaratory relief in federal court when access was denied. The court rejected the state's claims that state officials at different agencies can't sue each other in federal court.

"The PAIMI Act gives a designated protection and advocacy system like IPAS the authority to investigate incidents of abuse and neglect of individuals with mental illness and to pursue administrative, legal, and other remedies on behalf of those individuals," Judge David Hamilton wrote for eight of the nine judges. Judge John Tinder did not participate in the appeal.

The lead plaintiff's lawyer in the case, Seth Galanter of Morrison & Foerster in Washington, hailed the ruling, saying it could finally shed some light on the puzzling death of the mentally ill woman who died in 2006.

"How did a woman, who, as far as we could tell, was healthy, die in 30 days?" Galanter asked. "It may be that it was just an unpreventable tragedy....But until we see the records, we're not going to be able to work with the state to try and fix things."

Galanter, who took the case pro bono, said the ruling delivers a strong message that the federal statute is not optional. "States have to comply with it. And if they don't, then they can be sued in federal court," he said.

The ruling in *Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration* rejected the state's theory that IPAS did not have the right to access the requested records under the federal statute and that the 11th Amendment barred one state agency from suing other state officials in federal court. This past July a three-judge panel of the 7th Circuit had agreed with the defense.

Indiana Solicitor General Thomas Fisher argued the case for the state. His office declined to comment. Officials with the Indiana Family and Social Services Administration, the lead defendant in the suit, were not available for comment.

MORRISON | FOERSTER

# Press Release.

FOR IMMEDIATE RELEASE

425 Market Street, San Francisco, CA 94105

CONTACT: FRANCES COSICO, PUBLIC RELATIONS COORDINATOR
415.268.6063 • FCOSICO@MOFO.COM

## Morrison & Foerster Secures Victory for Indiana Protection and Advocacy Services in 11th Amendment Case

CHICAGO, IL (April 22, 2010) – Morrison & Foerster today received a favorable ruling for Indiana Protection and Advocacy Services (IPAS) in a case against state-operated hospitals that was argued before all the judges of the United States Court of Appeals for the Seventh Circuit. Judge David Hamilton, writing for 8 of 9 judges, confirmed that federal law requires hospitals to give IPAS access to records, and if hospitals don't comply, they can be sued in federal court. The decision resolves in favor of IPAS the state hospital's claim that the 11th Amendment barred IPAS, an independent state agency, from suing other state officials in federal court. It also resoundingly affirms that the federal law authorizing access to records – the PAIMI Act – provides a federal cause of action for equitable relief and that authorizes access to peer review records.

IPAS, which protects individuals with disabilities, sued the state officials in 2006 for refusing to turn over pertinent records after a death and an allegation of abuse at a state hospital. The state officials claimed that IPAS did not have the right to access the requested records and that the state officials could not be sued in federal court. After an adverse decision by a three-judge appellate panel, IPAS obtained rehearing by the entire Seventh Circuit. IPAS, supported by the federal government and the National Disability Rights Network, argued the case against the Solicitor General of Indiana in February of this year.

"Today the Court recognized the critical role that protection and advocacy services such as IPAS play in ensuring the rights of people with disabilities and mental illness to be free from abuse and neglect," said Morrison & Foerster of counsel Seth Galanter, who was the lead attorney representing IPAS. "This battle has always been about access to records, and we are pleased that this decision will ensure that the state understands that compliance isn't optional."

"Congress created P&As 35 years ago to protect and advocate for individuals with disabilities, especially those who were often abused and neglected in state institutions. We applaud the court for finding that states can't avoid the oversight Congress intended," said Curtis Decker, executive director of National Disability Rights Network, of which IPAS is a member.

Mr. Galanter's winning team included Morrison & Foerster partner Brian R. Matsui and associate Jeremy M. McLaughlin. The firm served as co-counsel with IPAS' inside counsel, Debra J. Dial and Karen Davis. The case was handled pro bono

### ABOUT MOFO.

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, Fortune 100 companies, investment banks and technology and life science companies. Our clients count on us for innovative and business-minded solutions. Our commitment to serving client needs has resulted in enduring relationships and a record of high achievement. For the last six years, we've been included on The *American*

This is MoFo.

© 2010 Morrison & Foerster LLP | mofo.com

CONTACT: EILEEN M. KING, DIRECTOR OF PUBLIC RELATIONS
212.336.4309 • EKING@MOFO.COM

*Lawyer*'s A-List. *Fortune* named us one of the "100 Best Companies to Work For." We are among the leaders in the profession for our longstanding commitment to pro bono work. Our lawyers share a commitment to achieving results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com. Our iPhone/iPod Touch app is available for free from Apple's App Store.

Prior Results Do Not Guarantee a Similar Outcome

# Courthouse News Service

Monday, April 26, 2010 Last Update: 1:14 PM PT

**Court Orders Hospital to Provide Patient Records**

By TIM HULL

ShareThis

(CN) - Federal law gives an Indiana agency that advocates for the mentally ill access to its client's hospital records, the 7th circuit ruled.

The Chicago-based court of appeals, sitting *en banc*, found that a hospital must give Indiana Protection and Advocacy Services access to patient records under the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986.

If the hospital fails to comply, the agency can sue in federal court without running afoul of the Eleventh Amendment, the circuit found.

The full 7th Circuit ruled 8-1 to uphold a district court ruling, while reversing a decision by its own three-judge panel.

Larue Carter Memorial Hospital, a psychiatric hospital in Indianapolis, denied the agency's request to see patient records after the death of one patient and allegations of abuse of another.

The agency sued the hospital in 2006, alleging violations of the Mental Illness Act. The hospital claimed that the law did not require it to hand over the records. The district court ruled for the agency, and the hospital appealed.

The 7th Circuit's three-judge panel reversed, however, finding that the Eleventh Amendment and the lack of a statutory cause of action barred the action. The full court reheard the issue and agreed with the district court.

Calling the lawsuit "a classic application of *Ex parte Young*," Judge David Hamilton wrote that the Eleventh Amendment does not bar the agency's request for declaratory and injunctive relief against state officials, because the suit "asks a federal court to order state officials to modify their conduct to comply with federal law."

A close reading of the Act, Hamilton wrote, reveals that "Congress expressed its intent to create a legally enforceable right of access to patient records vested in an identifiable class - protection and advocacy systems ... which act for the benefit and protection of mentally ill individuals who may have difficulty acting for themselves."

Hamilton added that "if and when those protection and advocacy systems are denied their right of access, the (Mental Illness Act) shows with sufficient clarity that the remedy is a suit to enforce the right of access in federal or state court."

The circuit modified the district court judgment to include only the named state officials in their official capacities, and affirmed as modified, with Chief Judge Frank Easterbrook dissenting.

The Judicial View Case Summary Alerts
A Publication of The Judicial View, LLC

Create custom email alerts TODAY to expand your user experience.
CUSTOMIZE ALERTS!

Home Cases Law Review Law Articles News Announcements Publish Search Log In

Case Categories

Administrative Law
ADR
Agriculture
Antitrust
Bankruptcy
Business Organizations
Business Valuation
Civil Procedure
Civil Remedies
Civil Rights
Communications
Conflict of Laws
Constitutional Law
Construction
Contracts
Copyright
Criminal Justice
Damages
Education
Employment
Energy / Utilities
Entertainment
Environmental
Expert Witness
Finance / Banking
Government / Politics
Health Care
Immigration
Insurance
International
Malpractice
Maritime
Patent
Product Liability
Property
Securities
Shareholder
Taxation
Technology
Torts
Trade Secret
Trademark
Transportation
Veterans
Wills / Trusts / Estates

Authorize.Net
Accept Credit Cards Online

Home >>Court Cases>>>>**Court Orders Access to Record of Mentally Ill Patients**

## Cases

More <html>

### Court Orders Access to Record of Mentally Ill Patients

**Indiana Protection and Advocacy Services v. Indiana Family and Social Services Services, Case No. 08-3183 (C.A. 7, Apr. 22, 2010)**

Pursuant to the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("the PAIMI Act"), 42 U.S.C. § 10801 et seq., the district court ordered Indiana state officials and a state agency to give plaintiff Indiana Protection and Advocacy Services ("IPAS") access to records of two mentally ill patients in a state hospital. On appeal, a panel of this court reversed, finding that the Eleventh Amendment and the lack of a statutory cause of action barred the action. Indiana Protection and Advocacy Services v. Indiana Family and Social Services Admin., 573 F.3d 548, 550-52 (7th Cir. 2009). We granted rehearing en banc and hold: (1) the Eleventh Amendment does not bar plaintiff IPAS from seeking injunctive and declaratory relief against named state officials; (2) the PAIMI Act itself provides a cause of action for injunctive and declaratory relief to enforce the Act; and (3) plaintiff is entitled to access to peer review records of treatment of covered mentally ill patients. Accordingly, we affirm the judgment of the district court as modified to direct that the relief runs only against the named state officials in their official capacities.

Upon finding that "individuals with mental illness are vulnerable to abuse and serious injury," Congress enacted the PAIMI Act in 1986 to "ensure that the rights of individuals with mental illness are protected" and to "assist States to establish and operate a protection and advocacy system for individuals with mental illness which will . . . protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes . . . ." 42 U.S.C. §§ 10801(a)(1), (b)(1), (b)(2)(A). The Act provides funding for a state on the condition that the state designates a "protection and advocacy system" to accomplish these goals. 42 U.S.C. § 10803(2)(A). The Act gives each state a choice. The designated protection and advocacy system may be either an independent state agency or a private entity. 42 U.S.C. § 15044(a) (Developmental Disabilities and Bill of Rights Act), incorporated by reference in 42 U.S.C. § 10802(2). IPAS, an independent state agency, is Indiana's designated protection and advocacy system under the PAIMI Act. Like any protection and advocacy system, it has the power to contract with other agencies or individuals to help provide its services. 42 U.S.C. § 10804.

The PAIMI Act gives a designated protection and advocacy system like IPAS the authority to investigate incidents of abuse and neglect of individuals with mental illness and to pursue administrative, legal, and other remedies on behalf of those individuals. 42 U.S.C. § 10805(a)(1). To achieve those objectives, the Act requires that IPAS have a right to access certain patient records. Specifically, the Act requires that IPAS "shall . . . have access to all records of any individual who is a client of the system if such individual . . . has authorized the system to have such access." 42 U.S.C. § 10805(a)(4)(A). The Act also requires that IPAS "shall . . . have access to all records of . . . any individual (including an individual who has died or whose whereabouts are unknown) (i) who . . . is unable to authorize the system to have such access; (ii) who does not have a legal guardian . . . ; and (iii) with respect to whom . . . there is probable cause to believe that such individual has been subject to abuse or neglect." 42 U.S.C. § 10805(a)(4)(B).

**Click to View the Full Text PDF of the Court's Decision**

Court Orders Access to Record of Mentally Ill Patients

Jurisdiction: U.S. Court of Appeals, Seventh Circuit
Related Categories: Civil-Procedure, Civil-Remedies

| District Court Judge(s) | District Court Judge Jurisdiction(s) |
|---|---|
| Larry J. McKinney | Southern District of Indiana, Indianapolis Division |

Law Journal Directory

Cleveland State University
DePaul University
Fordham University
Hofstra University
Loyola University Chicago
Marquette University
National University of Singapore
North-West University
Rutgers School of Law
Southern New England
St. John's University
Stanford University
Suffolk University
Tsinghua University
University of Akron
University of Connecticut
University of Houston
University of Zagreb
Washburn University
Widener University
Yeshiva University
Yijun Institute

Contributor Directory

| Amicus Lawyer(s) | Amicus Law Firm(s) |
|---|---|
| Alisa B. Klein | United States Department of Justice |

| Appellant Lawyer(s) | Appellant Law Firm(s) |
|---|---|
| Thomas M. Fisher | Attorney General's Office |

| Appellee Lawyer(s) | Appellee Law Firm(s) |
|---|---|
| Seth M. Galanter | Morrison & Foerster, LLP |

Ads by Google

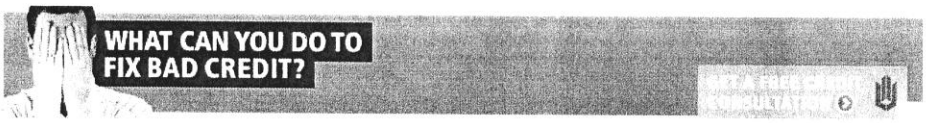
**Eric C. Bohnet, Attorney**
Appeals in all Federal and Indiana state appellate courts
bohnetlaw.com

**Disability Applications**
We'll figure out what you qualify for, and submit all paperwork!
www.MylerDisability.com

**Ask a Lawyer: Court**
24 Lawyers and Judges Are Online! Ask a Question, Get an Answer ASAP.
Law.JustAnswer.com/Court

**Save the Navy SEALs**
Sign Dan Burton's petition Stop these hero's court martial
www.indianadan.com

**JK Harris Tax Rep Firm**
Solve Your IRS Tax Problems. Over 325 Locations. Call JK Harris Today
www.JKHarris.com




**Click the maroon box above for a formatted PDF of the decision.**
No Text available-PDF is probably scanned

All Content © 2007-2010 The Judicial View, L.L.C. All Right Reserved.
About The Judicial View ™ | Privacy Policy | Terms of Use | Contact Us | Advertise | Site Map

**Subject:** National Law Journal article

"Full 7th Circuit lets state-run group sue state in federal court," National Law Journal, 4/23/2010, Seth Galanter is quoted, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202451305143, subscription required

The U.S. Court of Appeals for the 7th Circuit, sitting en banc, has ruled that one state agency can sue another to gain access to state medical records under a federal statute meant to protect the mentally ill.

In this case, a state-run advocacy group in Indiana had sued state officials for not turning over the records involving two patients at state hospitals: a woman who died 30 days after entering the hospital and a man who alleged he had been assaulted.

On April 22, the 7th Circuit held that the agency, Indiana Protection and Advocacy Services (IPAS), was entitled to access the records under 1986 Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and to seek injunctive and declaratory relief in federal court when access was denied. The court rejected the state's claims that state officials at different agencies can't sue each other in federal court.

"The PAIMI Act gives a designated protection and advocacy system like IPAS the authority to investigate incidents of abuse and neglect of individuals with mental illness and to pursue administrative, legal, and other remedies on behalf of those individuals," Judge David Hamilton wrote for eight of the nine judges. Judge John Tinder did not participate in the appeal.

The lead plaintiff's lawyer in the case, Seth Galanter of Morrison & Foerster in Washington, hailed the ruling, saying it could finally shed some light on the puzzling death of the mentally ill woman who died in 2006.

"How did a woman, who, as far as we could tell, was healthy, die in 30 days?" Galanter asked. "It may be that it was just an unpreventable tragedy....But until we see the records, we're not going to be able to work with the state to try and fix things."

Galanter, who took the case pro bono, said the ruling delivers a strong message that the federal statute is not optional. "States have to comply with it. And if they don't, then they can be sued in federal court," he said.

The ruling in *Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration* rejected the state's theory that IPAS did not have the right to access the requested records under the federal statute and that the 11th Amendment barred one state agency from suing other state officials in federal court. This past July a three-judge panel of the 7th Circuit had agreed with the defense.

Indiana Solicitor General Thomas Fisher argued the case for the state. His office declined to comment. Officials with the Indiana Family and Social Services Administration, the lead defendant in the suit, were not available for comment.

**The Indiana Law Blog**

**Focus is on Indiana law, and on interesting developments in law, government, and more (not just in Indiana).**

**Friday, April 23, 2010**

## IND. DECISIONS - 7TH CIRCUIT DECIDES ONE INDIANA CASE TODAY

The 63-page en banc opinion is Indiana Protection and Advocacy Services v. Indiana FSSA. It was heard before EASTERBROOK, Chief Judge, and POSNER, FLAUM, KANNE, ROVNER, WOOD, WILLIAMS, SYKES, and HAMILTON, Circuit Judges. Judge Tinder did not participate in the consideration of this appeal.

This ILB entry from Feb. 24, 2010 presents the background to this case. Here is part of the entry:

[On July 28, 2009] the 7th Circuit panel, consisting of Chief Judge Easterbrook, Judge Sykes, and Northern District of Illinois Judge Kendall, sitting by designation, ruled: "This suit, between one state agency and another, is outside the scope of §1983 and blocked by the eleventh amendment."

But that was not the end, the Court later voted to hear the case en banc and vacated the July 28th opinion.

The federal government filed an amicus on the side of IPAS, and the Indiana Attorney General [argued] the other side. This is a 11th Amendment issue pertaining to the question of when and if a state can sue itself.

Judge Hamilton writes the majority opinion. Judge Posner joins, but writes separately, beginning on p. 38. CJ Easterbrook dissents, beginning on p. 49.

Judge Hamilton's opinion for the majority begins:

HAMILTON, Circuit Judge. Pursuant to the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("the PAIMI Act"), 42 U.S.C. § 10801 et seq., the district court ordered Indiana state officials and a state agency to give plaintiff Indiana Protection and Advocacy Services ("IPAS") access to records of two mentally ill patients in a state hospital. On appeal, a panel of this court reversed, finding that the Eleventh Amendment and the lack of a statutory cause of action barred the action. Indiana Protection and Advocacy Services v. Indiana Family and Social Services Admin., 573 F.3d 548, 550-52 (7th Cir. 2009). We granted rehearing en banc and hold: (1) the Eleventh Amendment does not bar plaintiff IPAS from seeking injunctive and declaratory relief against named state officials; (2) the PAIMI Act itself provides a cause of action for injunctive and declaratory relief to enforce the Act; and (3) plaintiff is entitled to access to peer review records of treatment of covered mentally ill patients. Accordingly, we affirm the judgment of the district court as modified to direct that the relief runs only against the named state officials in their official capacities.

Posted by Marcia Oddi on April 22, 2010 01:56 PM
Posted to Ind. (7th Cir.) Decisions